

Order

Michigan Supreme Court
Lansing, Michigan

October 30, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2022-23

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)-(C) [Unchanged.]

(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) A plaintiff invoking the Supreme Court's original jurisdiction under Const 1963, art 4, § 6(19) must file with the clerk all of the following:

(a) 1 signed copy of a complaint that

(i) sets forth with particularity the factual basis for the challenge to the commission's plan;

(ii) indicates whether any factual questions or disputes are anticipated that will require resolution by the Supreme Court;

- (iii) states whether the plaintiff anticipates the need for discovery and the development of a factual record;
 - (iv) attaches documents that provide factual support for the complaint, including, as may be applicable, a sworn statement from a qualified expert attesting to the expert's opinion as to the factual basis for the plaintiff's claim that the commission's plan violates the law;
 - (v) identifies all statutes involved in the case; and
 - (vi) provides legal arguments in support of the complaint, with citations to legal authority. There is no expectation that copies of court rules, statutes, or caselaw be appended to the complaint.
- (b) 1 signed copy of a brief conforming as nearly as possible to MCR 7.212(B) and (C).
- (c) Proof that the complaint and brief were served on the defendant. 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) an individual designated by the Independent Citizens Redistricting Commission or Secretary of State as a person to receive service.
- (d) The fees provided by MCR 7.319(C)(1) and MCL 600.1986(1)(a).
- (2) In all other original actions, a plaintiff must file with the clerk all of the following:
- (1)-(2) [Relettered as (a)-(b) but otherwise unchanged.]
 - (c3) Proof that the complaint and brief were served on the defendant, and
 - (a) [Relettered as (i) but otherwise unchanged.]

(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.~~

(c)-(d) [Relettered as (ii)-(iii) but otherwise unchanged.]

(4) [Relettered as (d) but otherwise unchanged.]

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

(E) Answer.

(1) A defendant in an action filed under Const 1963, art 4, § 6(19) must file the following with the clerk within 7 days after service of the complaint and supporting brief, unless the Court directs otherwise:

(a) 1 signed copy of an answer to the complaint that~~in conformity with MCR 2.111(C);~~

(i) sets forth with particularity the factual basis for the challenge to or support for the commission's plan,

(ii) states whether any factual questions or disputes are anticipated that will require resolution by the Supreme Court,

(iii) states whether the defendant anticipates the need for discovery and the development of a factual record,

(iv) attaches documents that provide factual support for the answer,

(v) identifies all statutes involved in the case, and

(vi) provides legal arguments in support of the answer, with citations to legal authority. There is no expectation that copies of court rules, statutes, or caselaw be appended to the answer.

(b)-(c) [Unchanged.]

(2)-(4)[Unchanged.]

(F)-(J) [Unchanged.]

(K) Appointment of Master. In a case that invokes the Court's original jurisdiction under Const 1963, art 4, § 6(19), the Court may appoint a master as provided in this subrule.

(1) Appointment. The Court may appoint a master to conduct an evidentiary hearing if the party's pleadings or briefs demonstrate that a genuine issue of material fact exists that must be determined before a resolution can be reached as to whether the commission violated the law, or that there is a need for discovery and the development of a factual record.

(a) Upon appointment, the master must set a time and a place for the hearing and notify the parties at least 28 days in advance.

(b) The master must rule on all motions and other procedural matters incident to the pleadings and hearing.

(c) Recommendations on dispositive motions shall not be announced until the conclusion of the hearing, except that the master may refer to the Court on an interlocutory basis a recommendation regarding a dispositive motion.

(d) The master may conduct one or more pretrial conferences and may order a prehearing conference to obtain admissions or otherwise narrow the issues presented by the pleadings.

(e) Unless the parties agree to waive them, closing arguments at the hearing before the master shall be oral and take place upon conclusion of the presentation of evidence.

(f) The master may not adjourn or postpone closing arguments for the preparation of a transcript or the submission of proposed findings of fact.

(g) MCR 2.003(B) shall govern all matters concerning the disqualification of a master.

(2) Discovery.

(a) The master may enter all pretrial orders permitted by the rules of civil procedure, including those controlling the extent and scope of discovery under MCR 2.302. However, the Court may limit or define the scope of the master's authority by order.

(b) Parties must engage in the following pretrial or discovery proceedings:

(i) At least 21 days before a scheduled public hearing, the parties shall provide to one another, in writing, the names and addresses of all persons whom they intend to call at the hearing, a copy of all statements and affidavits given by those persons, and any material in their possession that they intend to introduce as evidence at the hearing.

(ii) The parties shall give supplemental notice to one another within 5 days after any additional witness or material has been identified and at least 10 days before a scheduled hearing.

(c) A deposition of a witness who is living outside the state or who is unable to attend a hearing may be taken by videoconferencing or telephone, or otherwise as allowed for good cause shown.

(d) If a party fails to comply with subrules (K)(2)(a) or (b), the master may, on motion and showing of material prejudice as a result of the failure, impose one or more of the sanctions set forth in MCR 2.313(B)(2)(a)-(e).

(3) Subpoenas.

(a) Issuance of Subpoenas. The attorneys may issue subpoenas for the attendance of witnesses or the production of documents or other tangible evidence.

(b) Sanctions for Contempt; Disobedience by Party.

- (i) Contempt proceedings against a nonparty for failure to obey a subpoena issued pursuant to this rule may be brought pursuant to MCR 2.506(E) in the circuit court for the county in which the individual resides, in which the individual is found, in which the contempt occurred, or in which the hearing is to be held.
 - (ii) If a party disobeys a subpoena or other lawful order of the master, whether before or during the hearing, the commission or the master may order such sanctions as are just, including, but not limited to, those set forth in MCR 2.313(B)(2)(a)-(e).
- (4) Hearing.
 - (a) Procedure. The public hearing must conform as nearly as possible to the rules of procedure and evidence governing the trial of civil actions in the circuit court. The plaintiff must present the evidence in support of its challenge to the redistricting plan and at all times has the burden of proving the allegations by a preponderance of the evidence. Any witness who testifies at the hearing is subject to cross-examination by either party as an opposite party under MCL 600.2161.
 - (b) Effect of Failure to Comply.
 - (i) If the defendant is in default for not having filed a timely answer or fails to attend the proceedings without being excused by the master, the allegations set forth in the complaint shall be deemed admitted, taken as true, and may form the basis for the master to make findings of fact.
 - (ii) Record. The proceedings at the hearing must be recorded by stenographic or mechanical means. If the master declines to admit evidence, a separate record must be made so that the Court may consider that evidence and determine whether to include it in the record.
- (5) Report. The court reporter must prepare a transcript of the proceedings conducted before the master within 21 days of the conclusion of the hearing, filing the original with the Court, and serving a copy on the parties, by e-mail. Within 21 days after a transcript of the proceedings is provided, the master must prepare and transmit to the Court a report that contains a brief

statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented in the pleadings.

- (6) Objections to Report. Within 14 days after the master's report is received, the parties may file with the Court 1 signed copy of a brief in conformity with MCR 7.312 that is limited to objecting to findings or omissions in the report.
- (7) Appearance Before Court. When the hearing before the master has concluded, the Court may set a date for hearing objections to the master's report upon the motion of a party or on the Court's own motion.
- (8) Timing. For good cause shown, the timing required by subrules (K)(1)-(7) may be modified.

(K) [Relettered as (L) but otherwise unchanged.]

~~(M)~~ 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. If a master was appointed under subrule (K), the Court may adopt the findings of the master, in whole or in part, by reference. 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. 2022-23): The proposed amendment of MCR 7.306 would facilitate factual development in statewide redistricting cases.

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 February 1, 2025 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. 2022-23. 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.

October 30, 2024


Clerk