



# Bringing Your Case to the High Court

By Liisa R. Speaker

Many people will often say they will take their case “all the way to the Supreme Court.” But what is involved with filing in the Michigan Supreme Court or United States Supreme Court? This article compares the admission process, the grounds for filing, and the technical requirements for requesting review in these high courts.

## Admission Requirements

Any Michigan-licensed attorney can file an application in the Michigan Supreme Court without any additional admission process. The United States Supreme Court requires a bit more fanfare.

## FAST FACTS

The admission process to the United States Supreme Court should be taken into account when preparing a petition for writ of certiorari.

Both the United States Supreme Court and the Michigan Supreme Court accept an extremely small percentage of cases—less than 1 percent and less than 4 percent respectively.

The technical requirements for filing a petition to the United States Supreme Court are more onerous and expensive than filing an application to the Michigan Supreme Court.

For an attorney not already admitted to practice in the United States Supreme Court, it is important to bear in mind that a petition for writ of certiorari must be filed within 90 days of the lower court's decision.

To qualify for admission to the United States Supreme Court bar, an applicant must (1) have been admitted to practice in the highest court of the state for at least three years immediately before applying, (2) not have been subject to adverse disciplinary action during that three-year period, and (3) appear to the Court to be of good moral and professional character.<sup>1</sup> The applicant must submit a certificate from the applicant's jurisdiction showing he or she is admitted to practice and in good standing.<sup>2</sup> A Michigan attorney can obtain a certificate of good standing for \$10 from the Michigan Supreme Court clerk.<sup>3</sup> The application must be notarized and accompanied by statements from two sponsors who are admitted to the Supreme Court bar, personally know the applicant, can attest to the applicant's qualifications and good moral character, and are not related to the applicant.<sup>4</sup> There is a \$200 filing fee.<sup>5</sup>

### Timing of Appeal and Judicial Caseload

For an attorney not already admitted to practice in the United States Supreme Court, it is important to bear in mind that a petition for writ of certiorari must be filed within 90 days of the lower court's decision.<sup>6</sup> If an attorney has a case that may be worthy of review in the United States Supreme Court, the attorney should prepare the application as soon as possible so he or she can focus on preparing the petition during that 90-day window.

In Michigan, the time for filing an application for leave to appeal varies depending on the type of case. In civil cases, including domestic relations matters, the deadline is 42 days from the Court of Appeals order; in criminal cases, it is 56 days; and in termination of parental rights cases, it is only 28 days.<sup>7</sup>

Both the Michigan Supreme Court and the United States Supreme Court exercise discretionary review of the cases before them.<sup>8</sup> The United States Supreme Court receives nearly 10,000 petitions for writ of certiorari each year and hears oral argument in only approximately 100 cases, or 1 percent of all filings.<sup>9</sup> The Michigan Supreme Court receives approximately 2,000 applica-

tions for leave to appeal each year and hears argument in roughly 75 cases, or less than 4 percent of all filings.<sup>10</sup> The number in Michigan, however, includes cases in which the Court granted leave and those in which the Court ordered oral argument on the application.

### Grounds for Appeal

To succeed in garnering the Michigan Supreme Court's attention, an appellant should review MCR 7.302(B), which identifies the types of issues important enough for the Court to consider. Frequently cited grounds for appeal are that the issue "involves legal principles of major significance to the state's jurisprudence" or "involves a substantial question as to the validity of a legislative act."<sup>11</sup> Another ground for appeal under MCR 7.302(B) is that the Court of Appeals decision was "clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals,"<sup>12</sup>



although anecdotally, it appears the Supreme Court does not frequently rely on that ground as a basis for granting leave.

The United States Supreme Court considers few types of cases, and the issues must be compelling. For instance, a petition for writ of certiorari must demonstrate that the United States Court of Appeals has issued a decision that conflicts with a decision of another circuit court or that a state's highest court has decided an

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important federal question in a way that conflicts with the decision of another state court of last resort or with a United States Court of Appeals decision.<sup>15</sup> A petition for writ of certiorari is rarely granted when the asserted error consists of incorrect factual findings or the misapplication of a properly stated rule of law.<sup>14</sup>

### Technical Filing Requirements

To file a petition for writ of certiorari in the United States Supreme Court, the petitioner must file 40 copies of the petition and pay a \$300 docket fee.<sup>15</sup> The petition must not exceed 9,000 words, or roughly 25 pages,<sup>16</sup> and must be printed and submitted in a booklet measuring 6 $\frac{1}{8}$ " by 9 $\frac{1}{4}$ ".<sup>17</sup> Attorneys usually opt to have these booklets prepared by a professional company, such as Becker Gallagher in Cincinnati or Cockle Law Brief Printing in Omaha, Nebraska,<sup>18</sup> and can expect to pay around \$1,200, which includes formatting the petition to booklet style, creating a table of contents and table of authorities, and printing and binding.<sup>19</sup> These companies also offer a number of services for an additional fee. Supreme Court Rule 33 provides several other technical requirements that need close observation, particularly if the attorney is not using the services of an outside company with significant experience in the United States Supreme Court.

In Michigan, the technical requirements are much simpler. The appellant must file an original and seven copies of an application for leave to appeal following the briefing rules of MCR 7.212, including the 50-page limit.<sup>20</sup> Although there are no specific binding requirements, regular filers in the Michigan Supreme Court often spiral bind the application. The application fee is \$375.<sup>21</sup>

In both courts, the contents of the petition or application are similar with slight variations in the order in which they appear: questions presented, table of contents, index of authorities, statement of jurisdiction, statement of facts, and argument.<sup>22</sup> Although there is no appendix requirement for an application to the Michi-

gan Supreme Court, most practitioners find that providing a few key documents is helpful. In the United States Supreme Court, an appendix is required and must include the statutory or constitutional provisions at issue (if they are too lengthy to reproduce in the body of the petition), the portions of the record relied on by the petitioner to the extent they are voluminous, and the lower court decisions.<sup>23</sup>

At the application stage in Michigan, the appellant only serves one copy of the application on each party, while the petitioner in the United States Supreme Court must serve three copies of the petition for writ of certiorari on each party.<sup>24</sup>

Although there is no court rule requiring decisions within a specific time frame, applications to the Michigan Supreme Court are typically decided within 4–6 months of filing, while petitions for writ of certiorari are ruled on within 3–4 months of filing. ■



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### FOOTNOTES

1. Sup Ct R 5.1.
2. Sup Ct R 5.2.
3. See <<http://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Pages/Attorney-Certification.aspx>>. All websites cited in this article were accessed January 22, 2013.
4. Sup Ct R 5.2.
5. Sup Ct R 5.5.
6. Sup Ct R 13.1.
7. MCR 7.302(C).
8. See Sup Ct R 10; MCR 7.302(B).
9. Supreme Court of the United States, *The Justices' Caseload* <<http://www.supremecourt.gov/about/justicecaseload.aspx>>.
10. State Court Administrative Office, *Michigan Supreme Court Annual Report 2011*, p 2, available at <<http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Statistics/2011/2011%20Michigan%20Supreme%20Court%20Annual%20Report.pdf>>; Bateman, *A new style of oral advocacy: Oral argument on the application for leave to appeal*, 11 Appellate Practice 7 (Spring 2007), available at <<http://www.michbar.org/appellate/pdfs/spring07.pdf>>.
11. MCR 7.302(B)(1) and (3).
12. MCR 7.302(B)(5).
13. Sup Ct R 10.
14. Sup Ct R 10.
15. Sup Ct R 38(a); 28 USC 1911.
16. Sup Ct R 33.1 and 33.2.
17. Sup Ct R 33.1.
18. See <<http://www.beckergallagher.com>> and <<http://www.cocklelaw.com>>.
19. This information was a rough estimate provided by Becker Gallagher for a 30-page petition and 40-page appendix.
20. MCR 7.302(A).
21. MCR 7.319(B)(7)(g).
22. Compare MCR 7.302(A) with Sup Ct R 14.
23. Sup Ct R 14.
24. Compare MCR 7.302(A)(3) with Sup Ct R 34.