

**Rule 381. Original Actions in the Supreme Court Pursuant to Article VI, Section 4(a), of the Constitution**

**(a) Motion for Leave to File; Only Issues of Law Considered.** Proceedings in the supreme court in original actions in cases relating to revenue, *mandamus*, prohibition, or *habeas corpus*, and as may be necessary to the complete determination of any case on review, shall be instituted by filing a motion, supported by explanatory suggestions, for leave to file a complaint seeking appropriate relief. Only issues of law will be considered. The proposed complaint shall be sworn to and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues of law.

**(b) Service of Process.** The motion, together with the proposed complaint, shall be served upon the other party or parties, including the nominal party or parties, and proof of service shall be filed at the time the motion is filed.

**(c) Judge a Nominal Party.** In an original action to review a judge's judicial act the judge is a nominal party, only, in the proceeding, and need not respond to the motion or complaint unless instructed to do so by the court. The judge's failure to do so will not admit any allegation. Counsel for the prevailing party may file any appropriate documents for that party but shall not file any document in the name of the judge.

**(d) Objections to Motion.** The respondent shall have 7 days after personal or e-mail service of the motion, or 14 days after mailing of the motion if service is by mail, or 14 days after delivery to a third-party commercial carrier if service is by delivery to a third-party commercial carrier, or within such further time as the court or a judge thereof may allow to file any objections to the motion, and service shall be made upon the movant and proof of service filed with the clerk of the court. Oral argument on the motion shall be permitted as the court may allow.

**(e) Briefs.** If the motion is allowed, briefs conforming to the requirements of Rules 341 through 344 shall be filed in support of the pleadings, within the time fixed by the court on motion of any party or on its own motion. On notice to the court and the other party or parties, the plaintiff or defendant may allow the original filing to stand as the brief without order of court.

Amended effective May 27, 1969, and July 1, 1971; amended January 5, 1981, effective February 1, 1981; amended February 19, 1982, effective April 1, 1982; amended February 27, 1987, effective April 1, 1987; amended December 17, 1993, effective February 1, 1994; amended March 1, 2001, effective immediately; amended December 29, 2009, effective immediately; amended March 14, 2014, effective immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Committee Comments  
(Revised January 5, 1981)

Paragraphs (a), (b) and (c)

Prior to the adoption of the Constitution of 1970, the original-jurisdiction rule necessarily was concerned with the only original-jurisdiction cases authorized by the Constitution of 1870, which were limited to actions relating to revenue, mandamus, prohibition and habeas corpus. The new constitution vests original and exclusive jurisdiction in the Supreme Court in other classes of cases

in which factual issues might arise. Rule 381 would be inappropriate for such cases. Paragraph (a) has, therefore, been modified to limit Rule 381 to the traditional original actions to which it has previously applied, which are now covered by article VI, section 4(a), of the 1970 Constitution. A new Rule 382 provides for cases arising by virtue of the new mandatory exclusive original jurisdiction vested in the Supreme Court by articles IV and V of the 1970 Constitution.

The procedure in original actions was unchanged in substance by this rule, as adopted effective January 1, 1967, though it is spelled out in more detail than it was in former Rule 46, which governed until that date. Effective January 1, 1964, the paragraph of the former rule requiring original proceedings relating to the revenue to be brought at least 20 days before the first day of the term, unless the cause is continued, was deleted as unnecessary. Matters relating to the closing of the issues, the briefing schedule, and the holding of an oral argument are left to the discretion of the Supreme Court.

Paragraph (a) was amended in 1981 to add the penultimate sentence, requiring that when the motion is filed when the court is not in session, a copy shall be sent to each of the justices at his district chambers. See the committee comments to Rule 361(c).

#### Paragraph (d)

Paragraph (d) was added to Rule 381 in May, 1969, to protect the judge whose action is being reviewed from becoming personally involved as a party in litigation in which his role is solely judicial. The amendment makes it unnecessary for the judge to choose between the alternatives of retaining counsel of his own or being represented by counsel for the successful party. "A judge will thus be guarded from engaging in ex parte discussions with counsel or aligning himself even temporarily with one side in pending litigation." *Rapp v. Van Densen* (3d Cir. 1965), 350 F.2d 806, 813. See also *General Tire & Rubber Co. v. Watkins* (4th Cir. 1966), 363 F.2d 87, 89. See also Rule 21 of the Federal Rules of Appellate Procedure.