



The Voice of the
Defense Bar

Friendly Persuasion:
**DRAFTING & USING HIGH-
IMPACT AMICUS BRIEFS**



Lawrence S. Ebner
Capital Appellate Advocacy PLLC
Washington, D.C.
202-729-6337

lawrence.ebner@capitalappellate.com
www.capitalappellate.com

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Webinar Discusses Amicus Briefs From Various Perspectives

- ❖ You are an outside attorney or in-house counsel handling or managing a case when it goes on appeal, or
- ❖ You represent a trade association, professional organization, advocacy group, or individual corporation that is interested in providing – or that is being solicited to provide – amicus support, or
- ❖ You have been engaged – or want to be engaged – as amicus counsel

Regardless of your perspective . . .

Webinar Objective:

Help you gain a better understanding of how amicus briefs are used in appellate litigation & what makes an amicus brief effective



TOPICS

Webinar Topics

- Role of amicus briefs in appellate advocacy
- Soliciting amicus support
- Amicus brief content & style
- Rules governing amicus briefs
- Federal or state government as *amicus curiae*



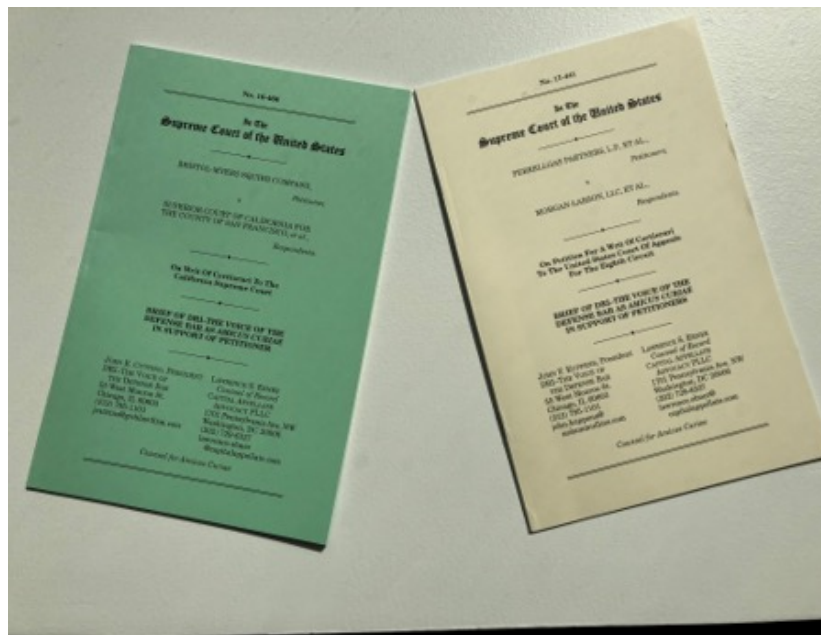
Role of Amicus Briefs



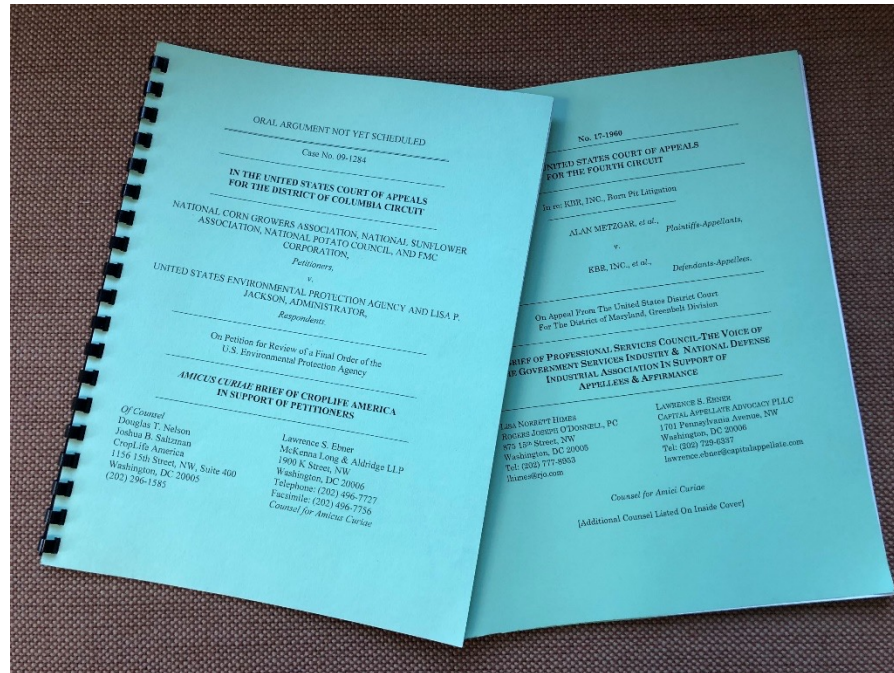
Amicus curiae (“friend of the court”) briefs are commonplace in appellate litigation

Where do amicus briefs get filed?

Supreme Court of the United States (petition & merits stages)



U.S. Courts of Appeals (panel & rehearing stages)



State Appellate Courts (review petition & merits stages)

SUPREME COURT OF NEW JERSEY
Docket No.: 079958

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-4698-14T1
Docket No. A-1910-16T1

IN RE: ACCUTANE® LITIGATION

Sat Below:
Hon. Susan L. Raiser, P.J.A.D.
Hon. Ellen L. Koblitz, P.J.A.D.
Hon. Thomas W. Summers, Jr.,
P.J.A.D.

On Appeal From Superior Court,
Law Division, Atlantic County
Case No. 271

Sat Below:
Hon. Nelson C. Johnson, J.S.C.

Civil Action

BRIEF OF AMICUS CURIAE DRI - THE VOICE OF THE DEFENSE BAR

Diana C. Manning (018021993)
Bressler, Amery & Ross, P.C.
325 Columbia Turnpike
Suite 301
Platham Park, NJ 07932
(973) 514-1200
dmanning@bressler.com

Mary Massaron (P43885)
Hilary A. Ballentine (P49979)
(Pro Hac Vice applications
pending)
Plunkett Cooney
38505 Woodward Avenue,
Suite 100
Bloomfield Hills, MI 48304
(313) 983-4801

John F. Kuppens
President of
DRI- The Voice
of the Defense Bar
(Pro Hac Vice application
pending)
55 W. Monroe St., Suite 2000
Chicago, IL 60601

Counsel for Amicus Curiae DRI - The Voice of the Defense Bar

Federal District Courts
State Trial Courts
Administrative Tribunals

. . . sometimes, but rarely!

Amicus Briefs are Proliferating



The Number of Amicus Briefs Continues to Increase

- During the Supreme Court's October 2017 term, almost 900 merits-stage amicus briefs were filed in approximately 65 cases granted review (Empirical SCOTUS)
 - This is almost double the number of amicus briefs that were filed in 1995 (Larsen & Devins, *The Amicus Machine*, 102 Va. L. Rev. 1901 (2016))
- Hundreds of amicus briefs also are filed at the certiorari petition-stage
 - According to one observer, the chances that a certiorari petition will be granted are 6 times higher (12% rather than 2%) if it is supported by at least one amicus brief (*Id.*)

Amicus briefs serve at least three significant functions:

- They provide appellate courts with additional information, perspective, and legal or policy arguments
- They provide direct, case-specific judicial access to any organization that has an identifiable interest in – and wants a voice on – the questions presented by an appeal
- They afford attorneys an opportunity to play a role, and showcase their brief-writing skills, in important appeals being handled by attorneys at other firms

Petition-stage amicus briefs submitted by the Solicitor General to the Supreme Court (“CVSG” briefs) serve an additional important function:

- They enable the SG to act as a gatekeeper, screening private-party cases where there is a federal interest & recommending to the Supreme Court which cases to hear
- Supreme Court is usually – but not always – deferential to the SG’s recommendations

Soliciting Amicus Support

If you are representing a party in an appeal, you should

THINK AMICUS

. . . and you should think amicus *long before* the deadline
for filing amicus briefs

Exception: “Thinking amicus” usually is not necessary . . .

- When an appeal involves application of well-settled law to the facts
- When you are opposing a certiorari petition
 - Conventional wisdom is that amicus briefs opposing a certiorari petition are counterproductive because they call attention to the petition

What does thinking amicus mean?

Ask yourself questions like these:

- *Would amicus support from particular organizations – or on particular issues or subjects – be helpful?*

Soliciting Amicus Support

➤ *What would an amicus brief say that is different from what your brief will say?*

○ For example:

- Importance of the issues & their impact on industry and/or the public
- Policy implications of the issues
- Additional “legislative” (but not adjudicatory) facts
- Expanded legal arguments (e.g., legislative or regulatory history)
- New legal *arguments*
 - Usually not new legal *issues* (but see *Dart Cherokee*, 135 S. Ct. 547 (2014))

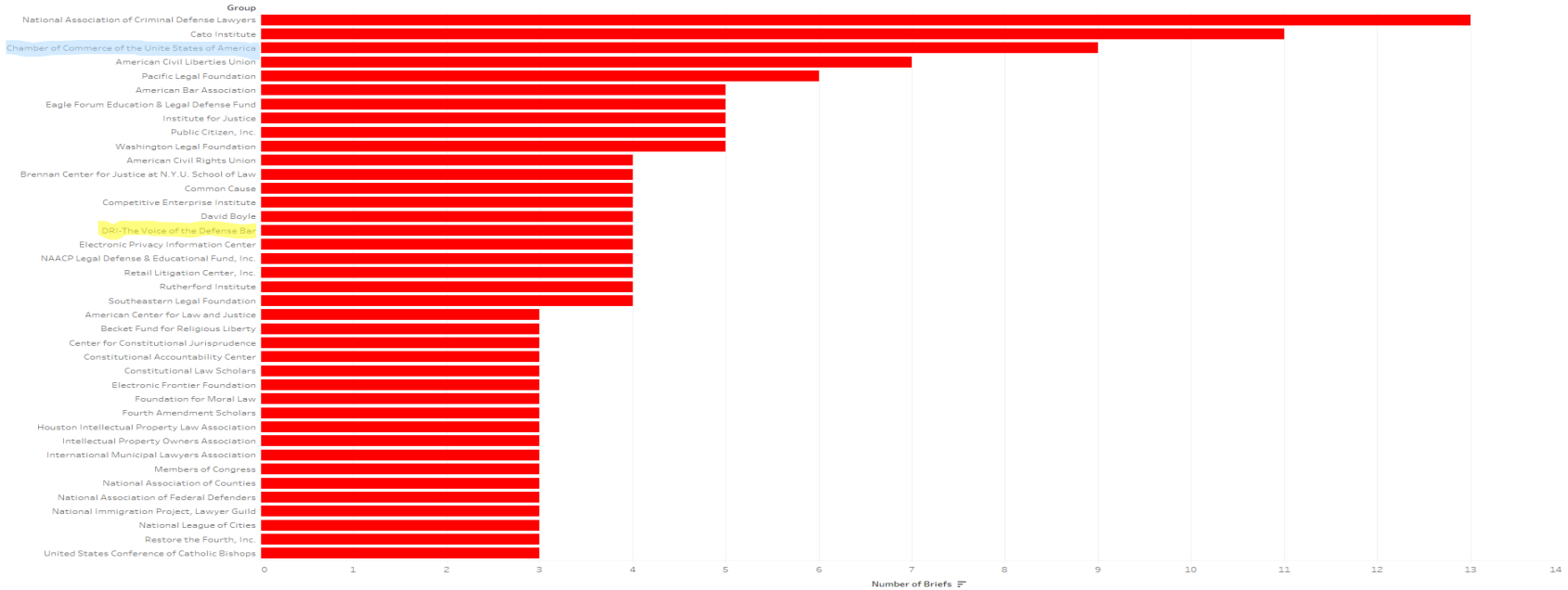
➤ *From whom should I solicit amicus support?*

- For example:
 - Trade associations & professional organizations
 - Advocacy groups (often aligned with plaintiffs and/or against industry)
 - Individual companies involved in similar litigation
 - Law professors and other ad hoc groups of experts
 - United States, state & local governments, foreign governments

Soliciting Amicus Support

Top Supreme Court Amicus Filers (Merits Stage)

Merits Amicus First Listed Filing Group (3 or more), OT 2017



How To Solicit Amicus Support

- Sooner is better (many membership organizations need adequate time to decide whether to file & to prepare a brief) (e.g., DRI needs 45 days)
- Send a short (2 to 4 page) memo to prospective amici summarizing (i) the questions presented, (ii) the nature & factual background of the case, (iii) proceedings and opinions below, (iv) the amicus filing deadline, and (v) what the proposed amicus brief could address, and why that would be helpful
- Think about organizing groups of amici (i.e., co-amici) to file one or two briefs

Soliciting Amicus Support



If you are seeking amicus support, do not offer to help pay for, or to help write, the amicus brief!

- Amicus briefs are not supposed to function as a page extension for the supported party
- Supreme Court & federal courts of appeals have disclosure rules that act as deterrents to party funding or authorship of amicus briefs [Sup. Ct. R. 37.6; Fed. R. App. P. 29(a)(4)(e)]
- Many appellate lawyers will write an amicus brief for a reasonable flat fee or even pro bono

- ***But if you are representing a party in an appeal, it's okay to coordinate amici, suggest topics, and read & comment on draft amicus briefs***

[see 2010 comment to Fed. R. App. P. 29 – “coordination between the amicus and the [supported] party is desirable to the extent that it helps to avoid duplicative arguments”]

- ❑ Party counsel sometimes hold in-person or telephonic briefing sessions to attract & coordinate *amici curiae*

Soliciting Amicus Support

- Some organizations, such as DRI, have their own amicus committees and amicus request forms
- **DRI**
 - DRI files almost exclusively in the U.S. Supreme Court (at both the petition and merits stages)
 - DRI’s “Amicus Curiae Request Form” must be submitted (amicus@dri.org) at least 45 days before an amicus brief is due
 - DRI’s 10-member Amicus Committee reviews amicus support requests & files a brief if there is an affirmative consensus



Amicus Brief Content & Style

#1 Rule Regarding the Content of Amicus Briefs:



- Don't file amicus briefs that repeat the supported party's – or other amici's – legal arguments

Supreme Court Rule 37.1

“An *amicus curiae* brief that brings to the attention of the Court relevant matter **not already brought to its attention by the parties** may be of considerable help to the Court. An *amicus curiae* brief that **does not serve** this purpose **burdens** the Court, and its filing **is not favored.**”

- **Translation:** The Court is not interested in receiving amicus briefs that merely repeat a party's, or other amici's, arguments

D.C. Circuit Rule 29

“(a) **Contents of Brief.** The brief **must avoid repetition of facts or legal arguments** made in the principal (appellant/petitioner or appellee/respondent) brief and **focus on points not made or adequately elaborated upon in the principal brief**, although relevant to the issues before this court. . . .

(d) **Single Brief.** **Amici curiae on the same side must join in a single brief to the extent practicable.** This requirement does not apply to a governmental entity. **Any separate brief for an amicus curiae must contain a certificate of counsel plainly stating why the separate brief is necessary.** Generally unacceptable grounds for the filing of separate briefs include representations that the issues presented require greater length than these rules allow (appropriately addressed by a motion to exceed length limits), that counsel cannot coordinate their efforts due to geographical dispersion, or that separate presentations were allowed in earlier proceedings.”

5th Circuit Rule 29.2

“Contents and Form. Briefs filed under this rule must comply with the applicable FED. R. APP. P. provisions and with 5TH CIR. R. 31 and 32. The brief must include a supplemental statement of interested parties, if necessary to fully disclose all those with an interest in the amicus brief. **The brief should avoid the repetition of facts or legal arguments contained in the principal brief and should focus on points either not made or not adequately discussed in those briefs.** Any non-conforming brief may be stricken, on motion or sua sponte.”

7th Circuit Practitioner's Handbook

“Brief of an Amicus Curiae. In order to avoid repetition or restatement of arguments, counsel for amicus curiae should ascertain, before preparing a brief, the arguments that will be made in the brief of any party whose position amicus curiae is supporting. The court will scrutinize such motions carefully, and lawyers are advised to review the court’s decisions in *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F.3d 542 (7th Cir. 2003), and *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062 (7th Cir. 1997).”

➤ *Illinois Bell v. Voices for Choices* (Judge Posner):

This court has held that whether to allow the filing of an amicus curiae brief is a matter of "judicial grace." *National Organization for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir.2000). The judges of this court will therefore not grant rote permission to file such a brief, and in particular they will deny permission to file an amicus brief that essentially duplicates a party's brief. *Id.* at 617. The reasons for the policy are several: judges have heavy caseloads and therefore need to minimize extraneous reading; amicus briefs, often solicited by parties, may be used to make an end run around court-imposed limitations on the length of parties' briefs; the time and other resources required for the preparation and study of, and response to, amicus briefs drive up the cost of litigation; and the filing of an amicus brief is often an attempt to inject interest group politics into the federal appeals process. *Id.* at 616.

9th Circuit Advisory Committee Note

“The filing of **multiple amici curiae briefs raising the same points** in support of one party **is disfavored**. Prospective amici are **encouraged to file a joint brief**. Movants are reminded that the Court will review the amicus curiae brief in conjunction with the briefs submitted by the parties, so that **amici briefs should not repeat arguments or factual statements made by the parties.**”

- Possible exception to policy against duplicative amicus briefs: *Where the supported party's legal arguments are very poorly presented*

The Challenge

- It is always challenging to write an amicus brief that says something new, different, or additional where the supported party's petition or brief is comprehensive and well written
- When soliciting amicus support, a party's counsel should suggest specific, non-duplicative topics or arguments that prospective amici should consider addressing

Style

Amicus briefs are appellate briefs:

- There is an art to writing effective amicus briefs [see *Learning the High Art of Amicus Brief Writing, For The Defense* (Feb. 2017)]
- Amicus briefs are different from trial-court briefs & are best written by *appellate* specialists who are familiar with the style, content, and format that appellate judges expect

But don't be intimidated by the "amicus machine"!

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THE AMICUS MACHINE

Allison Orr Larsen & Neal Devins***

The Supreme Court receives a record number of amicus curiae briefs and cites to them with increasing regularity. Amicus briefs have also become influential in determining which cases the Court will hear. It thus becomes important to ask: Where do these briefs come from? The traditional tale describes amicus briefs as the product of interest-group lobbying. But that story is incomplete and outdated. Today, skilled and specialized advocates of the Supreme Court Bar strategize about what issues the Court should hear and from whom they should hear them. They then “wrangle” the necessary amici and “whisper” to coordinate the message. The result is orchestrated and intentional—the product of what we call “the amicus machine.”

This Article has two goals: The first is to offer a new description of the origin of many Supreme Court amicus briefs, explaining how it is that the Justices and the advocates benefit from this choreographed amicus process. Second, we make the perhaps surprising claim that the amicus machine is normatively desirable. Others have warned about the influence of the powerful lawyers of the Supreme Court Bar generally. While acknowledging these risks, we argue that—when it comes to amicus briefs—the benefits of specialization outweigh the costs.

* Professor of Law, The College of William and Mary School of Law.

** Sandra Day O'Connor Professor of Law and Professor of Government, The College of William and Mary School of Law. We are very grateful to the dozens of leading Supreme Court specialists (listed in the Appendix) who generously gave their time to help us with this project.

The “amicus machine”

“Today, skilled and specialized advocates of the Supreme Court Bar strategize about what issues the Court should hear and from whom they should hear them. They then ‘wrangle’ the necessary amici and ‘whisper’ to coordinate the message. The result is orchestrated and intentional—the product of what we call the ‘amicus machine.’” Allison Orr Larsen & Neal Devins, College of William & Mary School of Law

- This elite, self-perpetuating “amicus machine” exists to a limited extent
- But amicus support should not be confined to briefs that the amicus machine “wrangles” to deliver a preconceived message
- Numerous potential amici may want their voices heard on an issue
- Any skilled appellate specialist can write a persuasive amicus brief

Style Tip # 1

➤ Write your own brief

- Your brief should not read like the supported party's counsel wrote it
- As previously noted, the Supreme Court, federal courts of appeals, and many state appellate courts require a representation that no party or party counsel wrote an amicus brief in whole or part
- Discourage the supported party's counsel from extensively redlining or heavily editing your near-final draft brief – but substantive comments, and a few suggested word-level edits, are okay

Style Tip # 2

➤ **Keep it short**

- You want the court, or at least the judges' law clerks, to read your amicus brief – especially if several amicus briefs have been filed
- Don't feel obligated to reach the word/page limit

Style Tip # 3

- **Use the “Interest of the *Amicus Curiae*” section to establish credibility & engage the court**
- Do not limit the “Interest” section to a boilerplate description of the amicus party or parties
 - Explain why the case and/or question presented is important to the *amicus curiae* and its members or supporters
 - Describe what expertise and/or experience the *amicus curiae* has in connection with the question presented, including prior amicus filings
 - Discuss what the brief will add to the court’s understanding and/or consideration of the issues (e.g., perspective; impact; legal arguments)

Style Tip # 4

- **Don't get bogged down in the facts of the case**
 - Give the court perspective by writing at the 10,000 to 20,000-foot level
 - Provide just enough general background or facts to give your brief context and make it a self-contained document
 - Presenting your own detailed version of the facts is risky as well as unnecessary & annoying

Style Tip # 5

➤ Use an elevated, respectful, & somewhat restrained tone

- Focus on the legal issues, not the parties
- Do not be confrontational, antagonistic, or *ad hominem*
- Write in a straightforward and lofty – but not haughty – manner [SG briefs are excellent exemplars]
- Use pithy words and phrases
- Be honest about adverse authority, especially where a split of authority is a reason to grant review
- Enrich your brief by making good use of law review articles, treatises, and other secondary materials

Style Tip # 6

➤ **Make your brief readable**

- Use concise argument headings & subheadings as guideposts, and limit or avoid use of ALL CAPS
- Use appropriate fonts & font sizes (check the rules)
- If you want footnotes to be read, keep them to a minimum, make them short, and do not use microscopic font
- Avoid creating and overusing acronyms

Rules Governing Amicus Briefs

Supreme Court



Supreme Court Rule 37.5 - Contents

- [Supreme Court Guidance](#) (Jan. 2023)
- An amicus brief need consist only of the following substantive sections:
 - Interest of the *Amicus Curiae*
 - Summary of Argument
 - Argument
 - Conclusion
- It usually is not a good idea for an amicus brief to include a Question Presented page.
 - Instead, use the Interest of the Amicus Curiae section to identify the issue(s) that the brief addresses

Supreme Court Rule 37.6 – Mandatory Disclosure

“A brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the amicus curiae, its members, or its counsel, who made such a monetary contribution. **The disclosure shall be made in the first footnote on the first page of text.**”

- Footnote 1 also typically includes statements regarding the parties' consent & receipt of advance notice of your intention to file a petition-stage amicus brief

Supreme Court Rule 37.2 – Petition Stage

- Deadline: Amicus briefs supporting a certiorari petition are due 30 days after a case is docketed (same as Respondent's deadline for responding to the petition)
 - Amicus brief deadline extensions are not allowed – even if the Respondent obtains an extension!
 - But if, despite Respondent's waiver, the Court requests the Respondent to file a response to a certiorari petition, amicus briefs are due when that response is due

Amicus Brief Rules – Supreme Court – Petition Stage

- Advance Notice: Amicus counsel must provide all parties' counsel of record at least 10 days advance written notice of intention to file an amicus brief
 - This is to help Respondent decide whether to seek an extension of time for filing a response to the petition (since the response is otherwise due when amicus briefs are due)
 - The amicus brief must indicate that timely notice was provided

Amicus Brief Rules – Supreme Court – Petition Stage

- Consent: As of January 1, 2023, the Supreme Court has eliminated the requirement to obtain the parties' consent, or the Court's permission, to file a timely amicus brief

Amicus Brief Rules – Supreme Court – Petition Stage

Additional petition-stage amicus requirements:

- 6,000-word limit for a petition-stage amicus brief
- Amicus briefs must be in printed booklet form; cover (cream color) must identify party supported (almost always Petitioner)
- All amicus briefs now also must be filed electronically
- Counsel of record must be a member of Supreme Court Bar

Supreme Court Rule 37.3 – Merits Stage

- Advance notice is not required for merits-stage amicus briefs
- Merits-stage amicus briefs are due within 7 days after the supported party's brief is filed – time extensions are not allowed!
- As of January 1, 2023, the Court has eliminated the requirement to obtain the parties' consent, or the Court's permission
- 8,000-word limit
- Printed booklet cover must identify the party supported or indicate whether the amicus brief suggests affirmance or reversal
 - Light green cover if amicus brief supports Petitioner; dark green cover if amicus brief supports Respondent

Amicus Participation at Supreme Court Hearing?

- No, with two exceptions:
 - When the Solicitor General files a merits-stage amicus brief, and then, as usual, requests permission to share oral argument with the supported party
 - When the Court appoints an attorney to act as *amicus curiae* to argue a particular position not being advocated by the parties (e.g., *Lucia v. SEC*, No. 17-130, where Court appointed an *amicus curiae* attorney to argue in support of the judgment below)

U.S. Courts of Appeals



Rule # 1



Always read the Circuit rules, IOPs, & guidance

Federal Rule of Appellate Procedure 29

- Fed. R. App. P. 29 is supplemented and/or superseded by each Circuit's rules
- Rule 29 now has two parts:
 - Rule 29(a) – amicus briefs during initial consideration of appeal on the merits
 - Rule 29(b) [adopted in 2016]- amicus briefs during consideration of whether to grant rehearing

- Fed. R. App. P. 29(a)(4)(E) disclosure rule very similar to Sup. Ct. R. 37.6
 - An amicus brief must indicate with a party or its counsel helped to fund the brief, or authored the brief in whole or part
 - Acts as a deterrent because a disclosure that a party helped to write, or pay for, an amicus brief may seriously undermine the brief's credibility

Fed. R. App. P. 29(a) – Initial Consideration of Appeal

- A of now, all parties must consent, or motion for leave must be filed [Exception: federal, state, & local governments]
 - Again, there almost is never a good reason to withhold consent for a timely amicus brief
- Deadline: 7 days after the supported party's brief is filed
 - Court can grant leave for later filing (e.g., if *amicus curiae* recently discovered the appeal)
- Length: Half the length of the supported party's principal brief (13,000 words) = 6,500 words

Court of Appeals Rules

- Sections of a court of appeals amicus brief:
 - Statement of Interest
 - Summary of Argument (optional)
 - Argument
 - Conclusion

Fed. R. App. P. 29(b) – Consideration of Rehearing Petition

- Motion for leave required to file an amicus brief in support of, or in opposition to, a petition for panel rehearing or rehearing en banc [Exception: federal, state, & local government]

- Length – 2,600 words

- Deadlines
 - In support of petition - 7 days after petition is filed
 - In opposition to petition – no later than court’s deadline for a response to the petition (if Court requests a response)

Amicus Participation in Oral Argument?

- Yes, but rarely, and only with the court's permission
 - Main exception is when United States wishes to argue as *amicus curiae*, sometimes at the invitation of the court
 - DOJ attorney typically represents the United States at hearing

- Amicus rules vary
 - Example: California Supreme Court allows amicus letters to be submitted in support of a petition for review

Rule 800.5(g). Amicus curiae letters

- (1) Any person or entity wanting to support or oppose a petition for review or for an original writ must serve on all parties and send to the Supreme Court **an amicus curiae letter rather than a brief.**
- (2) The letter must describe the interest of the amicus curiae. Any matter attached to the letter or incorporated by reference must comply with rule 8.504(e).
- (3) Receipt of the letter does not constitute leave to file an amicus curiae brief on the merits under rule 8.520(f).

- Some state supreme courts not only welcome, but invite, amicus briefs to be submitted in specific cases on particular issues
- Example: Massachusetts Supreme Judicial Court website, Amicus Announcements page
 - “Amicus briefs, to assist the court, should focus on the ramifications of a decision and not solely on the interests of the parties filing such briefs. Amicus submissions are due no later than two weeks before the first day of the sitting in which the case is scheduled for argument.”

**Federal or State Government
as *Amicus Curiae***

The United States is the Most Influential *Amicus Curiae*!

- When the United States appears in an appeal as *amicus curiae*, the court is not required to agree with the federal government's advocacy views, but certainly gives them serious consideration
- Amicus Authority:
 - Supreme Court - Under 28 U.S.C. § 518 ("Conduct and argument of cases"), the Solicitor General (or Attorney General) represents the United States in cases before the U.S. Supreme Court – including as *amicus curiae* in private-party cases where there is a significant federal interest

United States as Amicus Curiae

- Other courts - Under 28 U.S.C. § 517 (“Interests of the United States in pending suits”), the United States, through the Solicitor General or Attorney General:
 - Files amicus briefs in U.S. courts of appeals
 - Files amicus briefs in state appellate courts
 - Files “Statements of Interest” in federal district courts

United States as Amicus Curiae

- The Office of the Solicitor General (“OSG”) determines whether the United States will participate as *amicus curiae* in any appeal where there is a federal interest
 - Supreme Court – OSG drafts amicus briefs – *the best in the business!!* - with input from cognizant Justice Department operating divisions & affected federal departments or agencies
 - Lower Appellate Courts – Appellate sections of cognizant Justice Department divisions draft amicus briefs with input from OSG & affected federal departments or agencies (independent agencies such as FTC & SEC sometimes draft their own amicus briefs)

- Oral arguments when the United States is *amicus curiae*
 - Presented by OSG in the Supreme Court
 - Presented by Justice Department operating division attorneys in other appellate courts

“CVSG” Briefs

- “CVSG” = “Call for the Views of the Solicitor General”
 - Purpose of CVSG is to help the Justices decide whether to review a case in which the federal government is not a party, but has a substantial interest
 - Issued after a certiorari petition & response, and other amicus briefs, have been filed and the Justices initially confer about a case
 - Issued in the form of an Order from the Supreme Court “inviting” the Solicitor General to file a brief expressing the views of the United States
 - Gatekeeper function: In a high percentage of cases, the Supreme Court follows SG’s recommendation on whether to grant or deny certiorari

“CVSG” Briefs (cont’d)

- A CVSG brief describes the interest of the United States, discusses the merits of the questions presented, and recommends whether review should be granted
- OSG frequently recommends against review based on the jurisdictional or procedural posture of the case, or the need for further “percolation” in the lower courts

“CVSG” Briefs (cont’d)

- Supreme Court gives OSG as much time as it needs to submit a CVSG brief (usually by the end of the Term in which the brief is requested)
 - After a CVSG brief is filed, the parties (but not *amici*) have an opportunity to promptly file a supplemental brief responding to what the CVSG brief argues & recommends

Meeting With OSG After a CVSG is Issued

- Before filing a CVSG brief, OSG seeks early input from both sides (i.e., petitioner & respondent), as well as from all DOJ operating divisions & federal departments or agencies that have an interest in the case or the questions presented
- OSG meets separately & in person with each side's counsel, usually on the same day, at the OSG conference room on the 5th floor of Main Justice
 - Discussion led by one of the Deputy SGs & an Assistant to the SG
 - Attorneys from cognizant Justice Department divisions, and from affected or interested departments & agencies, also attend

Meeting With OSG (cont'd)

- Each side can arrive with a delegation, but should select one very well-prepared attorney – preferably an appellate specialist – to discuss the case and explain why certiorari should, or should not, be granted
 - Be prepared for a rigorous set of questions, similar to what you might expect at a Supreme Court hearing
 - Objective: Make the United States “your new best friend” [see article, *United States as Amicus Curiae: Making Uncle Sam Your New Best Friend*]

Meeting With OSG (cont'd)

- Each side can provide OSG with a case memorandum either before or after the meeting
- OSG's position is a well-kept secret until the day that its CVSG brief is filed

States as Amicus Curiae

- States, or groups of States – through their Attorneys General or Solicitors General – can file *amicus* briefs in the Supreme Court & federal courts of appeals without requesting the parties' consent
- National Association of Attorneys General (NAAG), Center for Supreme Court Advocacy, provides States with amicus brief support, including coordinating, drafting & editing amicus briefs



Key Takeaways

Takeaways

- ❖ When a case goes on appeal, *think amicus*
- ❖ Amicus briefs should supplement, not repeat, the supported party's arguments
- ❖ Always check the rules, including local rules & guidance
- ❖ Amicus counsel should draft their own briefs, but coordinate with the supported party's counsel
- ❖ When the government appears as amicus curiae, provide as much timely input as possible

Questions? Comments?

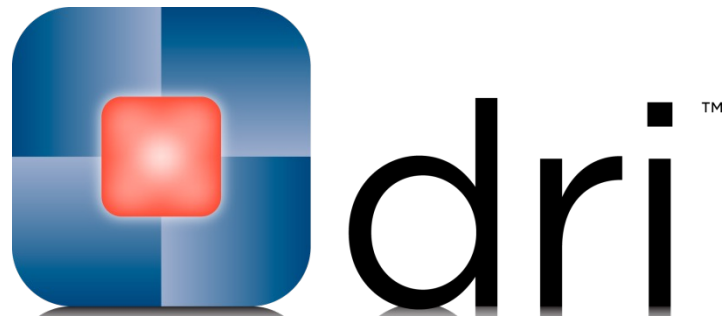
lawrence.ebner@capitalappellate.com



Lawrence S. Ebner



- Chair, DRI Amicus Committee
- Fellow, American Academy of Appellate Lawyers
- Founder, Capital Appellate Advocacy PLLC, a Washington, D.C.-based appellate litigation boutique advocating for business & industry in appellate courts throughout the United States
- Graduate, Harvard Law School (1972); Dartmouth College (1969)



The Voice of the
Defense Bar

Thank you.