

U.S. Judicial Conference's Proposed Amicus Brief Amendments Are *Unfriendly* To The Civil Defense Bar

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On July 31, 2024 the U.S. Judicial Conference's Committee on Rules of Practice and Procedure (commonly known as the "Standing Committee") published notice of proposed amendments to Federal Rule of Appellate Procedure 29 (Brief of an Amicus Curiae). See 89 Fed. Reg. 61498. The amendments, proposed by the Standing Committee's Advisory Committee on Appellate Rules, would make it more difficult for defense bar organizations such as FDCC to file amicus briefs in federal courts of appeals in cases involving legal issues important to their members.

Under the proposed amendments, an amicus brief no longer could be filed if, as almost always is the case, "all parties have consented to its filing." Fed. R. App. P. 29(a)(2). Instead, an amicus brief could be filed "only with leave of court" (click [here](#) to read a Preliminary Draft of the proposed Rule 29 amendments, among others). I explained last April in a Law360 Expert Analysis why ***Requiring Leave To File Amicus Briefs Is A Bad Idea***. Burdening federal courts of appeals with motions for leave accompanying every non-governmental amicus brief is an inexplicable step backward—especially in light of the Supreme Court's own rules change, effective January 1, 2023, allowing timely amicus briefs to be filed there *without* the parties' consent or the Court's permission.

The Rule 29 amendment, applicable in all federal courts of appeals, would require every motion for leave accompanied by a proposed amicus brief to "state . . . the reason the brief is helpful." The Advisory Committee's amicus subcommittee has suggested that this would serve as "a filter on the filing of unhelpful briefs." To the contrary, this vague "helpfulness" requirement would create mischief: An opposing party would be able to object to the filing of a proposed amicus brief on the ground that it supposedly is not "helpful." The uncertainty about whether an amicus brief will be accepted for filing may discourage preparation of briefs that provide a federal appeals court with additional, defense-oriented perspective on the legal issues involved in an

appeal—exactly what the plaintiffs’ bar would like to prevent a court from considering.

The Standing Committee should reject the Advisory Committee’s proposal. At a minimum, the Standing Committee should continue to allow amicus briefs to be filed in federal courts of appeals if all parties consent. Indeed, the Standing Committee should amend the rules to follow the Supreme Court’s lead and allow court of appeals amicus briefs to be filed without either the parties’ consent or the court’s permission.

The Standing Committee is soliciting submission of written comments on the proposed amendments (which also include changes to amicus funding-related disclosure rules) until February 17, 2025. And hearings, including testimony from interested parties, are scheduled for January 10 and February 14, 2025.

FDCC and other defense bar organizations should file written comments and orally testify in opposition to the proposed motion-for-leave requirement so that their voices can continue to be readily heard in federal appeals involving civil justice issues important to their members.



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