

Thinking Amicus

By Lawrence S. Ebner

Effective use of amicus curiae (“friend of the court”) briefs is an important component of appellate practice in federal and state courts. Every lawyer who is handling or managing an appeal should “think amicus.” In other words, think about whether submission of one or more amicus briefs would be helpful to your client’s position.


Based on the large number of amicus support requests received by DRI each year, many civil litigation defense lawyers already routinely think amicus. DRI’s Amicus Committee, one of the pillars of DRI’s Center for Law and Public Policy, considers those requests, which almost always are for amicus support in the U.S. Supreme Court at either the certiorari petition or merits stage.

But thinking amicus should not be limited to U.S. Supreme Court cases, or for that matter, to DRI. Federal courts of appeals and state supreme courts also welcome amicus submissions, provided that they do not duplicate the supported party’s legal arguments. Instead, an effective amicus brief needs to add something new, such as a discussion of the practical importance and impact of the legal questions presented, or insight on the public policy implications of the questions presented, or new or expanded legal arguments. Thinking amicus also means reach-

ing out to prospective amici who are well-qualified to contribute to an appellate court’s consideration of the appeal.

Thinking amicus should not be limited to attorneys already involved in an appeal. Other attorneys who represent trade associations, professional organizations, advocacy groups, or individual corporations that may want to have a voice in appeals involving important legal issues also should think amicus.

Knowing how to draft effective amicus briefs that actually will be read and considered by appellate courts is crucial. Amicus briefs are organized, focused, and written in a way that differs from most trial court briefs, and are subject to their own procedural rules.

Many aspects of preparation and use of high-impact amicus briefs are covered in a 75-minute on-demand webinar that I recently recorded for DRI. Topics covered include, for example, the role of amicus briefs in appellate litigation; solicitation of amicus support; content, style, and tone of amicus briefs; rules governing amicus briefs; and how to interact with the United States or state governments when they participate in an appeal as amicus curiae. The webinar is available through the DRI website, and CLE credit is available. 



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