

## A PRACTICAL GUIDE FOR FILING *AMICUS CURIAE* BRIEFS IN STATE APPELLATE COURTS

### Introduction

*Amicus* briefs have been a part of the United States legal system since the nineteenth century.<sup>1</sup> Numerous organizations, including government officials, private attorneys, corporations, and nonprofits, file thousands of *amicus* briefs in all fields of litigation each year. The articles of incorporation of the National Association of Counsel for Children (NACC) include the filing of *amicus* briefs as one of its three purposes.<sup>2</sup> Throughout the history of the organization, the NACC has filed *amicus* briefs in complex litigation involving children, including filing a brief in the 1999 United States Supreme Court case, Troxel v. Granville<sup>3</sup>, which dealt with grandparent/third party visitation rights.

As *amicus* practice has grown, the role of the majority of these briefs has evolved from theoretical neutrality to overt party advocacy. Recently, this shift has been the target of judicial scrutiny in courts across the country. Justice Posner's remarks in the 1997 case, Ryan v. Commodity Futures Trading Commission<sup>4</sup>, have sparked an ongoing debate regarding the appropriate role of an *amicus curiae*. In this case, Justice Posner rejected the brief of an *amicus curiae* stating, "After 16 years of reading *amicus curiae* briefs the vast majority of which have not assisted the judges, I have decided that it would be good to scrutinize these motions in a more careful, fish-eyed, fashion. The vast majority of *amicus* briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect, merely extending the length of the litigant's brief. Such *amicus* briefs should not be allowed. They are an abuse."<sup>5</sup>

In the area of children's law, there has been less judicial scrutiny. Yet, this does not mean that *amicus curiae* should disregard the ruling of Posner or the views of his supporters when writing an *amicus* brief in complex litigation involving the rights of children. In fact, there appears to be an opportunity for *amicus* practice for children to set a new precedent by remaining free from the criticism that plagues other interest groups.

This short summary is provided to help any party asked to participate in the submission of an *amicus* brief in children's litigation. It summarizes and highlights the recommendations and cautions that have been made in case decisions, law review articles, and social science journals over the past decade. The assertions made are based only on the available written sources and not independent research. In an area of practice that does not enjoy unlimited financial support, it is critical to make the limited number of *amicus* briefs filed on behalf of children of a consistently high quality.

First, we list the appropriate roles of *amicus curiae*. This can help reduce the chances that *amici* will file briefs when filing would not be helpful, or even might be counter-productive. Second, we visit what commentators view as the most effective strategy to follow once the decision to file an *amicus* brief has been reached. Third, we list the specific techniques viewed by commentators as likely to achieve the best results

when writing *amicus* briefs. Fourth, the common pitfalls that plague *amicus curiae* are outlined to help those in the field of children's rights litigation avoid making mistakes criticized in the past. Finally, we summarize the rules of *amicus* practice from all 50 states. A chart found as an Appendix provides particular information for each State. However, it is important to note that these rules are the topic of debate and may have been recently revised, so checking the rules provided is necessary.

### **Appropriate Roles of *Amicus Curiae***

Recent literature has identified numerous roles in which *amicus curiae* may be of assistance to the court. Depending on the specific litigation, an *amicus* brief may focus solely on one, or a combination of several, of the following identified roles.

First, it may be appropriate to use an *amicus curiae* brief to amplify or supplement the main legal and factual arguments presented in a party's brief. The brief can provide clarity for the court, in a manner similar to that of expert testimony, when the issue is convoluted. It may also present relevant extra-record facts and data that help the court make a more fully informed decision. In this type of brief, it is permissible, and sometimes desirable, to present the facts and circumstances differently than the party. However, filing this type of brief is only appropriate when page limitations prevent the party from fully addressing the complex issues in their own brief. As discussed in the "Common Pitfalls to Avoid" section, a brief that simply echoes a party's arguments is not useful to the court.

Second, an *amicus* brief may focus on an alternative legal argument to the argument provided in either party's main brief. This is particularly important if a party "is not putting its best legal foot forward."<sup>6</sup> It is also good to use this format when the parties have failed to address controlling or relevant precedent. In addition, this style of brief is appropriate to "argue points deemed too far reaching for emphasis by a party intent on winning a particular case."<sup>7</sup>

Third, it is appropriate to use an *amicus curiae* brief can be used to "apprise the court of broad-based legal, social, and economic implications of a decision or point out its unintended consequences for a group not before the court."<sup>8</sup> This is an important role, because it "provides a voice to those persons who are not parties but who may be affected by the decision."<sup>9</sup> In many cases, it is useful for the court to understand how their decision will affect children on a state or nationwide level. Typically, this type of brief provides extra-record data, usually in the form of special science data, to support its position.<sup>10</sup>

Fourth, an *amicus* brief may provide information that allows the court to base its decision in the particular case on a larger, more comprehensive, and more accurate legal framework. One way to do this is to use the *amicus* brief to "inform the court of other cases pending that will be influenced by the outcome and inform the court of variations among the cases that may require refinement of the legal analysis."<sup>11</sup> This style brief may also urge the court to limit its rulings and provide a legal analysis illustrating why a decision will be bad precedent for other similarly situated cases. Second, this style of brief may provide a collection of historical and factual references that merit judicial notice. If applicable, it is also appropriate for this type of brief to explain to the court how the particular statute at issue fits within a larger statutory framework. The purpose

of this style of brief is to educate and inform the court of the larger legal landscape to which the issue before it belongs.

Lastly, it is appropriate to use *amicus curiae* briefs to describe the intricacies of the specialized field of child welfare to the court. Often, the author or authors of an *amicus* brief may be more familiar with the issue being litigated than either of the parties. It is important for the court to have access to this expertise. There are also cases in which the *amicus curiae* may be in a better position than either of the parties to advocate for their own unique point of view. For example, for the National Association of Counsel for Children, this might well be all children in a particular category or class that have interests that must be respected.

One implication for potential *amici* is to state, at the beginning, which of these “agendas” describes the brief being filed. The brief should then adhere to the stated agenda in concise form. For further elaboration, see subsequent section on “Specific Writing Techniques.”

### **Effective Preparation Strategies**

Once the decision to participate as an *amici* has been made, based on the fulfillment of at least one of the above criteria, there are several important steps to take before beginning to write the brief. The following guidelines apply specifically to cases in which the *amicus* brief is being submitted as the result of a request made by counsel to a party.

First, it is important to discuss with counsel if there will be other *amici* participating on their behalf. If so, recent literature suggests working together to submit fewer high quality briefs that do not repeat one another.<sup>12</sup> Regarding the ethical questions this suggestion may raise, one commentator states, “At the Supreme Court level, sophisticated parties and counsel often convene meetings of potential *amici* in an attempt to form coalitions and to influence the nature of the presentations that will be made. Potential *amici*, in turn, often contact counsel for the party they support, recognizing that such party coordination can be beneficial. But there is little reason to see this common practice as a form of abuse.”<sup>13</sup>

Second, it is critical to clarify with counsel which type of brief they are asking you to submit. Part of this process involves deciding which type is most likely to help the party succeed. It also involves becoming informed of the party’s main arguments. This will allow the *amicus curiae* to assess whether the main argument is being presented in the most persuasive manner possible. This step will be most productive if the focus remains on “communication, cooperation, and coordination.”<sup>14</sup> As a result of this process, the *amici* should emerge with a clear picture of the role their brief will take and can now begin to write.

### **Specific Writing Techniques**

The most important advice to follow when writing an *amicus* brief is to make it short, well written, and effective. A brief that is poorly written and rambles on does not assist the court or help advance brief’s position. In addition, recent literature encourages writers of these briefs to make efforts to be dramatic, witty, attention getting, and provocative in an effort to capture the court’s attention.<sup>15</sup> However, this type of advice requires caution. According to commentators, no matter how exciting and innovative the

writing, the most important factor is still the relevance of the brief's content and its trustworthiness.

The most effective method of persuading the court that the brief submitted fulfills the above criteria is to rely on a combination of caselaw, reputable studies, academic research, and news reports. It also increases the credibility of the *amicus curiae* if a complete list of authors and financial supporters is provided in the first footnote of the brief. In the Supreme Court of the United States and some state Supreme Courts this footnote is required by the rules, but it is good practice for all *amicus* briefs to include this information.

Lastly, many states require a statement of interest be included in an *amicus* brief. A complete statement of interest includes five things. First, identify the *amicus*. Second, if an organization is sponsoring the brief, include a description of when it was founded and for what purpose. Also, include a brief description of the members of the organization and its activities. If the organization has filed briefs in the past this should be mentioned if it strengthens the statement of interest. Third, identify the interest of the *amicus* in this particular litigation. Fourth, describe for the court the unique perspective or information the *amicus* can provide. Fifth, explain to the court the impact of its decision beyond the parties in the litigation that makes the *amicus*'s participation desirable.<sup>16</sup>

### **Common Pitfalls To Be Avoided**

As *amicus curiae* practice has become more closely scrutinized, a few techniques and practices have been the target of the most criticism. If informed, one can easily avoid these mistakes.

First, no matter how many times a party asks you to submit a "me-too" brief that simply repeats their argument and comments on the weight of the evidence, refuse. Cases continue to appear in which motions to file *amicus* briefs are denied, because they do not aid the court by supplying arguments that differ from those presented by a party.<sup>17</sup> In 1990, the United States' Supreme Court added a provision to its *amicus* brief rule that states, "An *amicus* brief which brings relevant matter to the attention of the court that has not already been brought to its attention by the parties is of considerable help to the court. An *amicus* brief which does not serve this purpose simply burdens the staff and facilities of the court and its filing is not favored."<sup>18</sup> Several states have formally included this provision in their rules, and there is no literature that suggests that any states do not support this position.

A second important trap to avoid is that of misrepresenting social science data to support the brief's position. Common examples of this practice include: not following research norms, over-generalizing limited data, selectively distorting findings, making normative statements that appear to be empirical, and citing questionable research produced specifically for litigation.<sup>19</sup> In addition, ignoring social science data that goes against the brief's position is also discouraged. These common practices reflect a shift from an *amici*'s role of neutrality and objectivity to misguided advocacy. This practice, fueled by the desire to win, only leads to reduced credibility for the organization submitting the brief and the author or authors.

A third important area in which mistakes can be costly involves failure to read and follow state guidelines for writing and filing *amicus* briefs. Table 1: *Amicus* Rules

By State, found as an Appendix, supplies each state's particular rules for filing and content. However, checking the rules of the jurisdiction in which the brief is to be filed is highly recommended, as these rules have been the subject of recent reform in many states.

### **Summary of Rules of *Amicus* Practice**

Since every State adopts its own rules regarding *amicus* practice, this summary only highlights the key elements that exist in the rules of most States. The following summarizes the key elements included in Table 1.

Many states require the Court's permission to file *amicus* briefs. However, some states waive this requirement for government participants or *amicus* that obtain consent from all parties before filing. In addition, many states allow the Court to request *amicus* briefs. States also vary on whether the *amicus* must lodge the brief with the motion, if a motion is required. If the brief does not need to be lodged with the motion, the time for filing varies greatly between States. Many States also lay out the required contents of the motion. If your state lists the required elements of a motion, failure to include these provides a simple basis for denial.

States vary on whether they allow *amici* to participate in oral arguments. Some States forbid it, while others allow oral arguments on a motion, while others allow the *amicus* to share the time of the party whose position the brief supports. If your State has any other unique or additional elements to their rules, a column titled "other" includes this information.

### **Conclusion**

*Amicus curiae* have enjoyed a long history of support in our legal system. There is no reason to jeopardize their unique resources and opportunity for representation of important legal and social interests. This is specifically important because changing societal and cultural views related to children can be needed to help reach humane and just decisions in complex litigation involving the rights of children. In an increasingly burdened legal system, the importance of providing the most effective, concise, and ethical *amicus* brief possible is critical to children whose lives are being litigated.

**TABLE 1: AMICUS RULES BY STATE**

<b>State:</b>	<b>Rule(s)#:</b> If no footnote, then a Rule of Appellate Procedure	<b>Permission:</b> Lv =motion Ct = ct requests Wr = written consent by all parties O = other (see FN) S = State agency does not need permission to file	<b>Must brief be filed with motion?</b> NS = not specified	<b>Time for filing:</b> # = # of days O = other (see FN) S = same as party supported <sup>20</sup> Ct = ct orders	<b>Motion must contain:</b> In = applicant ID & interests Re = reasons why necessary or desirable O = other (see FN) NS = not specified	<b>Oral Arguments permitted on a motion?</b> O = other (see FN) NS = not specified Ex = only for extra - ordinary reasons	<b>Other imp info in rules?</b> Yes = see FN
AL	29	Lv or Ct	No	S	In & Re	Yes	
AK	212	Lv or Ct or Wr	No	S	In & Re	Ex	
AZ	16 & 31.25 <sup>21</sup>	Lv or Wr or O & S	Yes	40 <sup>22</sup>	In & Re & O <sup>23</sup>	Yes	Yes <sup>24</sup>
AR	4 & 5 & 6	O <sup>25</sup>	NS	S <sup>26</sup>	Re	No	Yes <sup>27</sup>
CA	14	O <sup>28</sup>	Yes	30 <sup>29</sup>	In & O <sup>30</sup>	NS	Yes <sup>31</sup>
CO	29	Lv or Ct	No	S	In & Re	Ex	
CT	67-7	O <sup>32</sup>	Yes	20 <sup>33</sup>	Id & O <sup>34</sup>	Yes	Yes <sup>35</sup>
DE	28 <sup>36</sup>	Lv or Ct	NS	Ct	In and Re	Ex	
FL	9.370	Ct or Wr	NS	S	O <sup>37</sup>	NS	
GA	23 & 25 <sup>38</sup>	O <sup>39</sup>	Does Not Apply	NS	Does Not Apply	NS	Yes <sup>40</sup>
HI	28	O <sup>41</sup>	NS	Ct	NS	NS	Yes <sup>42</sup>
ID	8	O <sup>43</sup>	NS	Ct	O <sup>44</sup>	O <sup>45</sup>	Yes <sup>46</sup>
IL	345 <sup>47</sup>	Lv or Ct	NS	S	Re	No	Yes <sup>48</sup>
IN	8.3	Lv or Ct	NS	S	In & Re	Ex	
IA	18	Lv or Ct or Wr	No	S	In & Re	Ex	
KS	6.06 <sup>49</sup>	O <sup>50</sup>	NS	30 <sup>51</sup>	NS	No	Yes <sup>52</sup>
KY	76.12 <sup>53</sup>	O <sup>54</sup>	Yes	15 <sup>55</sup>	O <sup>56</sup>	NS	Yes <sup>57</sup>
LA	7 & 2-12 <sup>58</sup>	O <sup>59</sup>	O <sup>60</sup>	O <sup>61</sup>	O <sup>62</sup>	O <sup>63</sup>	O <sup>64</sup>
ME	75A & 39B <sup>65</sup>	Lv or Wr or O <sup>66</sup>	NS	O <sup>67</sup>	In & Re	Ex	Yes <sup>68</sup>
MD	8-511	Lv or Ct	NS	S	In & Re & O <sup>69</sup>	Ex	
MA	17	Lv or Ct or O & S	Yes	S	In & Re	Ex	Yes <sup>70</sup>
MI	7.306 & 7.212 <sup>71</sup>	O <sup>72</sup>	NS	O <sup>73</sup>	NS	O <sup>74</sup>	Yes <sup>75</sup>
MN	129 & 11 <sup>76</sup>	Lv & O <sup>77</sup>	No	O <sup>78</sup>	In & Re & O <sup>79</sup>	Yes	Yes <sup>80</sup>

<b><u>State:</u></b>	<b><u>Rule(s)#:</u></b> If no foot-note, then a Rule of Appellate Procedure	<b><u>Permission:</u></b> Lv =motion Ct = ct requests Wr = written consent by all parties O = other (see FN) S = State agency does not need permission to file	<b><u>Must brief be filed with motion?</u></b> NS = not specified	<b><u>Time for filing:</u></b> # = # of days O = other (see FN) S = same as party supported <sup>81</sup> Ct = ct orders	<b><u>Motion must contain:</u></b> In = applicant ID & interests Re = reasons why necessary or desirable O = other (see FN) NS = not specified	<b><u>Oral Arguments permitted on a motion?</u></b> O = other (see FN) NS = not specified Ex = only for extra - ordinary reasons	<b><u>Other imp info in rules?</u></b> Yes = see FN
MS	29	Lv & O <sup>82</sup>	Yes	O <sup>83</sup>	O <sup>84</sup>	Ex	Yes <sup>85</sup>
MO	375 & 26 & 84.05 <sup>86</sup>	Lv or Ct or Wr	Yes	S	O <sup>87</sup>	O <sup>88</sup>	Yes <sup>89</sup>
MT	24	Lv or Wr	NS	NS	In & Re	Ex	
NE	9	Lv	NS	O <sup>90</sup>	NS	NS	Yes <sup>91</sup>
NV	29	Lv or Ct or Wr	No	S <sup>92</sup>	In & Re	Ex	
NH	30 <sup>93</sup>	Lv or Wr <sup>94</sup>	O <sup>95</sup>	S	O <sup>96</sup>	Yes	Yes <sup>97</sup>
NJ	1:13-9 <sup>98</sup>	Lv	NS	Ct	O <sup>99</sup>	Yes	Yes <sup>100</sup>
NM	12-215	Lv	No	S	In & Re	Yes <sup>101</sup>	Yes <sup>102</sup>
NY	500.4 & 500.11 & 530.7	Lv <sup>103</sup>	NS	NS	O <sup>104</sup>	Yes	Yes <sup>105</sup>
NC	28	Lv or Ct	No	S <sup>106</sup>	In & Re & O <sup>107</sup>	Ex	Yes <sup>108</sup>
ND	29	Lv or Ct	No	S	In & Re	Ex	
OH	17	Lv or Ct or Wr	NS	S <sup>109</sup>	In & Re	Ex	
OK	1.12 <sup>110</sup>	Lv or Wr	NS	S <sup>111</sup>	O <sup>112</sup>	Ex	Yes <sup>113</sup>
OR	8.15	O <sup>114</sup>	O <sup>115</sup>	O <sup>116</sup>	In & O <sup>117</sup>	Yes	Yes
PA	531	Not Required	Does Not Apply	O <sup>118</sup>	Does Not Apply	Ex	Yes <sup>119</sup>
RI	16	Lv or Ct or Wr	No	S <sup>120</sup>	In & Re	Ex	
SC	213	Lv or Ct	No	NS	In & Re	NS	Yes <sup>121</sup>
SD	15-26A	Lv or Ct <sup>122</sup>	NS	S	In & Re	O <sup>123</sup>	
TN	31	Lv or Ct	No	Ct	In & O <sup>124</sup>	Yes & O <sup>125</sup>	
TX	11	NS	NS	NS	NS	O <sup>126</sup>	Yes <sup>127</sup>
UT	25 & 50	Lv or Ct or Wr	NS	S <sup>128</sup>	In & Re	Ct	
VT	29	Lv or Ct or Wr & S	No	S <sup>129</sup>	In & Re	See Rule #34(I)	Yes <sup>130</sup>
VA	5:30 & 5A:23 & 5:35 <sup>131</sup>	Lv or Wr & S	No	S	NS	O <sup>132</sup>	

<b><u>State:</u></b>	<b><u>Rule(s)#:</u></b> If no footnote, then a Rule of Appellate Procedure	<b><u>Permission:</u></b> Lv = motion Ct = ct requests Wr = written consent by all parties O = other (see FN) S = State agency does not need permission to file	<b><u>Must brief be filed with motion?</u></b> NS = not specified	<b><u>Time for filing:</u></b> # = # of days O = other (see FN) S = same as party supported <sup>133</sup> Ct = ct orders	<b><u>Motion must contain:</u></b> In = applicant ID & interests Re = reasons why necessary or desirable O = other (see FN) NS = not specified	<b><u>Oral Arguments permitted on a motion?</u></b> O = other (see FN) NS = not specified Ex = only for extra - ordinary reasons	<b><u>Other imp info in rules?</u></b> Yes = see FN
WA	10.3 & 10.6 & 10.8	Ct or Wr or O <sup>134</sup>	No	Ct	In & Re & O <sup>135</sup>	NS	Yes <sup>136</sup>
WV	19	Lv or Ct & S	No	S	In & Re	Ex	
WI	809.19	Lv	Yes	10 <sup>137</sup>	In & Re	NS	
WY	7.12	Lv & Ct	Yes	11 <sup>138</sup>	In & Re & O <sup>139</sup>	Ex <sup>140</sup>	Yes <sup>141</sup>

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## ENDNOTES

<sup>1</sup> Alison Lucas, *Friends of the Court? The Ethics of Amicus Brief Writing in First Amendment Litigation*, 26 FORDHAM URB. L.J. 1605, 1607 (1999).

<sup>2</sup> Articles of Incorporation for The National Association of Counsel for Children. Article III(a) states, “The purposes for which the corporation is formed are: (a) ...to support the position of children through *amicus curiae* briefs...” (1977).

<sup>3</sup> *Troxel v. Granville*, 530 U.S. 57; 120 S. Ct. 2054 (U.S. 2000).

<sup>4</sup> *Ryan v. Commodity Futures Trading*, 125 F.3d 1062 (7<sup>th</sup> Cir. 1997).

<sup>5</sup> *Id.*

<sup>6</sup> Paul M. Smith, *The Sometimes Troubled Relationship Between Courts and Their “Friends”*, 24 NO. 4 LITIG. 24, 26 (1998).

<sup>7</sup> Luther T. Munford, *When Does the Curiae Need an Amicus?*, 1 J. APP. PRAC. & PROCESS 279, 280 (1999).

<sup>8</sup> Paul M. Sandler & Andrew D. Levy, APPELLATE PRACTICE FOR THE MARYLAND LAWYER: STATE AND FEDERAL: AMICUS BRIEFS 331 (1994).

<sup>9</sup> Munford, *supra* note 3, at 280.

<sup>10</sup> Mary-Christine Sungaila, *Effective Amicus Practice Before the United States Supreme Court: A Case Study*, 8 S. CAL. REV. L. & WOMEN’S STUD. 187,190 (1999).

<sup>11</sup> Smith, *supra* note 2, at 26.



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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 25.

<sup>14</sup> Sungaila, *supra* note 6, at 189.

<sup>15</sup> Reagan W. Simpson, *How to Be a Good Friend of the Court: Strategic Use of Amicus Briefs*, 28 SPG. BRIEF 38, 42 (1999).

<sup>16</sup> *Id.*

<sup>17</sup> Rathkamp v. Department of Community Affairs, 730 So. 2d 866 (Fla. Dist. Ct. App. 1999); Long v. Coast Resorts Inc., 49 F. Supp. 2d 1177 (D. Nev. 1999).

<sup>18</sup> FED. R APP. P. 37.

<sup>19</sup> Michael Rustad & Thomas Koenig, *The Supreme Court and Junk Social Science: Selective Distortion in Amicus Briefs*, 72 N. C. L. REV. 91, 100 (1993).

<sup>20</sup> Generally, a party may ask the Court for a different length of time for filing.

<sup>21</sup> Rule of Criminal Procedure #31.25.

<sup>22</sup> Court may provide otherwise.

<sup>23</sup> Applicant must also provide a statement that the applicant has read the relevant brief, petition, or motion.

<sup>24</sup> Counsel for parties may not write the brief in full or in part and all parties participating should be identified. In addition, reply briefs to the *amicus* are permitted within 20 days after the Court grants the motion for the *amicus* to file. This time may be extended upon a showing of good cause. Briefs must not exceed 12,000 words if proportionately spaced typeface is used or 35 pages if monospaced typeface is used.

<sup>25</sup> Permission of the Court required.

<sup>26</sup> If neutral, brief due at same time as that of appellant.

<sup>27</sup> *Amici* not permitted to file petitions for rehearing.

<sup>28</sup> Must file a request with the clerk of the Justice and serve all parties with a copy of the brief.

<sup>29</sup> Unless otherwise provided by the court, the brief must be filed within 30 days of the briefs filed by the parties.

<sup>30</sup> The motion must also contain the facts or questions of law that have not been adequately presented by the parties and their relevancy to the disposition of the case.

<sup>31</sup> Reply briefs may be filed within 20 days after the filing of the *amicus* brief and served on all parties. The length and form must comply with Rule #29.3.

<sup>32</sup> Must complete an application and must provide notice on or before filing the brief. The Attorney General does not need permission to file in cases involving constitutionality of state statutes.

<sup>33</sup> An application for permission to appear as an *amicus curiae* and the brief must be filed within 20 days after the filing of the brief by the party supported or within 20 days of the filing of the appellee's brief if neutral.

<sup>34</sup> Must also describe why the brief should be permitted.

<sup>35</sup> The brief may not exceed 10 pages unless a specific request is made justifying the reasons for a brief of more than that length. The form of the brief must comply with Ch. 67 rules.

<sup>36</sup> Supreme Court Rule #28.

<sup>37</sup> Motion must contain the reasons for the request and the party or interest on behalf of which the brief is being filed.

<sup>38</sup> Rule of the Supreme Court #23 and Rule of the Court of Appeals #25.

<sup>39</sup> No permission is required to file an *amicus* brief.

<sup>40</sup> Although no motion is required, the brief must contain the identity and interest of the persons on whose behalf the brief is being filed. Only members of the Bar of that particular court, or those appearing by courtesy, may file.

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- <sup>41</sup> *Amicus* briefs permitted only by order of the Court, however, the Attorney General may file without permission.
- <sup>42</sup> The length of the brief may not exceed 35 typed pages. The form must conform to Rule #32 and #38 specifications.
- <sup>43</sup> Oral or written application must be served on all parties and accepted by written order of the Court.
- <sup>44</sup> The application must: 1) set forth the particular employment or interest of the applicant, 2) state the name of the party supported, and 3) state whether permission is sought to file the brief or participate in oral arguments or both.
- <sup>45</sup> Request for participation in oral arguments must be part of written application.
- <sup>46</sup> Any objections to the appearance of an *amicus curiae* must be made by motion within 14 days of service of the application.
- <sup>47</sup> Supreme Court Rule #345.
- <sup>48</sup> The *amicus* must be identified on the cover of the brief and shall conform to any conditions imposed by the court. The requirements regarding the length and format of the brief are the same as those for the appellee.
- <sup>49</sup> Rule of the Supreme Court #6.06.
- <sup>50</sup> An application must be served on all counsel of record and the court must then order that participation is permitted.
- <sup>51</sup> Brief must be filed not less than 30 days before oral argument.
- <sup>52</sup> No *amicus* briefs are allowed in expedited appeals by an unemancipated minor for waiver of parental notification requirement.
- <sup>53</sup> Rule of Civil Procedure #76.12.
- <sup>54</sup> Court may order pursuant to an application filed by potential *amicus*.
- <sup>55</sup> Brief must be filed within 15 days of the filing of the brief of the appellee.
- <sup>56</sup> The applicant must specify: 1) the nature of the movant's interest (with particularity), 2) the points to be presented, and 3) their relevance to the disposition of the case.
- <sup>57</sup> *Amici* must pay a filing fee as specified in Rule #76.42(2)(a). The brief may not exceed 15 pages.
- <sup>58</sup> Rule of the Supreme Court #7 and Uniform Rules, Court of Appeals #2-12.
- <sup>59</sup> For the Supreme Court: Lv and must provide notice to the parties. For Appellate Courts: Lv and \$100 filing fee.
- <sup>60</sup> For the Supreme Court: Yes. For Appellate Courts: NS.
- <sup>61</sup> For Supreme Court: The brief must be filed within the time allowed for the party the brief supports. For Appellate Courts: NS.
- <sup>62</sup> For Supreme Court: Must satisfy one of the following criteria: 1) *amicus* has an interest in a similar case, or 2) there are matters of law or fact that may escape the Court's attention, or 3) the *amicus* has substantial interests. For Appellate Courts: NS.
- <sup>63</sup> For Supreme Court: NS. For Appellate Courts: No.
- <sup>64</sup> The Supreme Court does not permit reply briefs and places a 15 legal page or 20 letter page limit on length
- <sup>65</sup> Rule of Civil Procedure #75A and Rule of Criminal Procedure 39B.
- <sup>66</sup> The Attorney General may participate without permission if tort claims are alleged.
- <sup>67</sup> Unless otherwise provided by the court or stipulated by the parties, the brief must be filed on the date which the brief of the appellee is filed.
- <sup>68</sup> Reply briefs are permitted. A 50-page maximum applies to the length of the brief.
- <sup>69</sup> Motion must also state the issues that the *amicus* intends to raise.
- <sup>70</sup> See Rule #19(b) for requirements regarding the number of copies that must be filed and served.
- <sup>71</sup> Supreme Court Rule #7.306 and Rule of Appellate Procedure #7.212.
- <sup>72</sup> For Supreme Court: Lv and must conform to subrules (A) and (B) or MCR #7.309. For Appellate Courts: Must make a motion within 15 days of the filing of the brief of the appellee.
- <sup>73</sup> For Supreme Court: The brief must be filed within the time allowed for the party whose position the brief supports. For Appellate Courts: Time will be stated in order granting the motion to file.
- <sup>74</sup> Oral arguments permitted only by order of the Court.
- <sup>75</sup> The Appellate Court rules indicate that the issues addressed in the brief must be limited to those raised by the parties.
- <sup>76</sup> Rule of Appellate Procedure #129 and Special Rule of Practice for the Court of Appeals #11.

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- <sup>77</sup> The motion must be filed within 15 days after the notice of appeal.
- <sup>78</sup> The brief must be filed no later than 7 days after the time allowed for the filing of the brief of the party whose position the *amicus* supports on appeal, or the appellant, if the *amicus* is neutral. Must be accompanied by proof of service of process.
- <sup>79</sup> The *amicus* must identify if their interest is public or private in nature and identify the party or disposition which the *amicus* supports.
- <sup>80</sup> If the same attorney or law firm represents a party and a proposed *amicus curiae*, leave to file will only be granted upon a showing that the brief's position is not already before the court and the interests of justice require. A 20-page limit exists for briefs filed in civil cases.
- <sup>81</sup> Generally, a party may ask the Court for a different length of time for filing.
- <sup>82</sup> The state, attorney general, and guardian ad litem may file without permission when not parties.
- <sup>83</sup> The brief must be filed no later than 7 days after the filing of the initial brief of the party the *amicus* brief will support on appeal.
- <sup>84</sup> The motion must include one of the following: 1) identification of interest in case involving a similar question, or 2) counsel or the brief are inadequate, or 3) matters of fact or law will otherwise escape the Court's attention, or 4) the *amicus* has substantial unprotected interests.
- <sup>85</sup> The brief may not exceed 15 pages. Reply briefs are permitted under Rule #28(b) or (c) and must be filed within the time specified by Rule #31(a).
- <sup>86</sup> Eastern District Court of Appeals Special Rule #375 (ED) and Written District Court of Appeals Special Rule #26 (WD) and Supreme Court Rule #84.05 (SC)
- <sup>87</sup> Motion must include: 1) identification of parties refusing consent, 2) nature of applicant's interests, and questions of fact or law not adequately addressed and their relevancy to the disposition of the case.
- <sup>88</sup> ED = Yes, WD and SC = NS
- <sup>89</sup> A party may file an objection to the filing that states their reasons for refusing consent. The briefs must be accompanied by proof of service when filed and may not exceed 5 pages.
- <sup>90</sup> Brief will not be considered if filed within 20 days of oral arguments.
- <sup>91</sup> Briefs may not exceed 15 pages and form must comply with lengthy specifics described under Rule #9(B).
- <sup>92</sup> If all parties consent to a different time frame for filing, the court shall allow it.
- <sup>93</sup> Rule of the Supreme Court #30.
- <sup>94</sup> The State or Attorney General may file without permission when not parties.
- <sup>95</sup> If consent is denied by the parties, then a brief may be conditionally filed at this time.
- <sup>96</sup> Motion must include: 1) the nature of the movant's interest and 2) the facts or questions of law not adequately addressed and their relevance.
- <sup>97</sup> A motion stating the reasons for withholding consent from an *amicus* to file a brief may be seasonably filed.
- <sup>98</sup> Rule of General Application #1:13-9.
- <sup>99</sup> Motion must include: 1) identity of the applicant, 2) issues to be addressed, and 3) the nature of the applicant's interest, involvement or expertise.
- <sup>100</sup> Motion to file will be denied unless the Court is satisfied the brief assists in resolving an important public issue and does not unfairly prejudice any party. Once the court grants permission, the *amicus* may participate in any appeal without further leave.
- <sup>101</sup> The *amicus* may share the time allotted to the party whose position it supports on appeal but no additional time shall be granted.
- <sup>102</sup> The form of the brief must comply with rules #12-213 and #12-305.
- <sup>103</sup> Motion must be made sufficiently in advance of calendaring of the requested review.
- <sup>104</sup> Motion must contain a statement of one of the following: 1) Party or parties not capable of full or adequate presentation, or 2) law or arguments otherwise missed, or 3) why brief would be of special assistance to the Court.
- <sup>105</sup> Specific Department Rules: 1) Dept 2: Brief may not exceed 25 pages of standard type or 35 pages of printing by duplication or copying and see Rule #670.11 for more requirements. 2) Dept. 4: See Rule #110.13 for more requirements.
- <sup>106</sup> If all parties consent, a different time for filing may be permitted.
- <sup>107</sup> Motion must also state the questions of law to be addressed and the applicant's position on those questions.

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- <sup>108</sup> Form of brief must comply with Rule #26.
- <sup>109</sup> If all parties consent to a different time frame for filing, the court shall allow it.
- <sup>110</sup> Supreme Court Rule #1.12.
- <sup>111</sup> If filed in an original appeal, the Court shall govern the time to file.
- <sup>112</sup> Motion must include: 1) The nature and extent of the interest of the applicant, 2) facts or questions of law not adequately presented by parties and their relevancy to the disposition of the case. For criminal cases, see Rule of Court of Criminal Appeals #3.4.
- <sup>113</sup> Form of brief filed in a civil case must comply with Rules #1.10, #1.11, and #1.19. Criminal cases not specified. Length of all briefs must not exceed 25 pages and may not include exhibits or appendices. Brief is confined to issues raised by the parties on appeal.
- <sup>114</sup> A member of the Oregon Bar must file a written application for permission and serve a copy on all parties.
- <sup>115</sup> Supreme Court: Yes. Appellate Courts: No.
- <sup>116</sup> Supreme Court: See Rule #8.15(5) for lengthy description. Appellate Courts: S unless Neutral = date the opening brief is due.
- <sup>117</sup> Motion must also state whether the applicant intends to present a public or private interest. No arguments on the resolution of the case are permitted.
- <sup>118</sup> If neutral, brief is due within the time allowed to the appellant.
- <sup>119</sup> The Western District Court Local Rule #3.2 requires filing of a disclosure statement. See rule.
- <sup>120</sup> If all parties consent, the time may for filing may be changed.
- <sup>121</sup> The brief is limited to argument on the issues on appeal as presented by the parties. Form must comply with Rules #207(b) and #210.
- <sup>122</sup> Must serve parties.
- <sup>123</sup> Oral arguments permitted only if party agrees to share their time with *amicus*.
- <sup>124</sup> Must also include how the brief will assist the Court.
- <sup>125</sup> Court may request oral arguments by *amicus*.
- <sup>126</sup> Oral arguments permitted only if party agrees to share time and the Court permits.
- <sup>127</sup> This rule requires the disclosure of the identity of all persons or entities on whose behalf the brief is tendered and the source of any fees paid to prepare the brief. Copies of the brief must be served on all parties.
- <sup>128</sup> If all parties consent, time for filing may be changed.
- <sup>129</sup> Time for filing may be changed if all parties consent.
- <sup>130</sup> The form of the brief must comply with Rule #28(h).
- <sup>131</sup> All rules are Rules of the Supreme Court.
- <sup>132</sup> Oral arguments permitted only if jointly requested with the party supported. The request must specify the amount of time the party supported is willing to yield to the *amicus*.
- <sup>133</sup> Generally, a party may ask the Court for a different length of time for filing.
- <sup>134</sup> May also demonstrate the brief's assistance to the Court.
- <sup>135</sup> Brief must also: 1) Demonstrate familiarity with issues and scope of parties' arguments, 2) List specific issues to be addressed. Brief must be filed by a member of the Washington State Bar or an attorney in association with such.
- <sup>136</sup> An objection must be made to an *amicus* within 5 days of receiving the motion. Brief must conform to Rule #10.2(a)(1) and (2).
- <sup>137</sup> Brief must be filed no later than 10 days after the brief of the Respondent is filed.
- <sup>138</sup> Brief must be filed no later than 11 days after the principal brief of the party the brief will support on appeal, or if *amicus* is neutral, 11 days after the first brief of any party.
- <sup>139</sup> Must also include: 1) view on competency of representation of the party, 2) any interests in other cases affected by this decision, 3) unique perspective or information.
- <sup>140</sup> Party supported must also consent to share time for oral arguments.
- <sup>141</sup> Form must comply with Rule #7.01 except no statement of issues, case, or appendix required. Cover of brief must identify the party and disposition it supports.