

## **NACC Amicus Curiae Policies and Procedures<sup>1</sup>**

### **I. Amicus Curiae Application Criteria**

- a. Case participation aligns with and promotes NACC’s mission;
- b. Case holds potential for widespread impact in the field of children’s law and does not merely serve the interests of a particular litigant;
- c. The *Amicus Curiae* legal argument must be supported by existing law or the good faith extension of the law;
- d. The case must be at the appellate level.
- e. Absent an application from a party in the case, NACC may also initiate an *amicus curiae* brief at the discretion of the Executive Director.

### **II. Procedures for Review of Amicus Curiae Requests**

#### **a. Initial Request:**

- i. To request NACC *Amicus Curiae* participation, the applicant must submit a completed *Amicus Curiae* Formal Request Form, available at: [http://www.naccchildlaw.org/?page=amicus\\_curiae](http://www.naccchildlaw.org/?page=amicus_curiae).
- ii. If the request is to join a brief being prepared by or on behalf of another organization, it must be submitted at least 30 days before the filing deadline. If the request is for NACC to prepare its own amicus brief, the request must be submitted at least 60 days before the date upon which the brief must be filed. The Executive Director may waive these deadlines for good cause.

#### **b. Review by NACC Executive Director:**

- i. At the discretion of the Executive Director, NACC may invite perspectives from members and non-members with expertise on the legal issue or those who may be impacted by the case at any time during the process.
- ii. The NACC Executive Director, after consultation with staff, shall make a preliminary determination regarding the request, taking into account whether the application criteria have been established and whether it is practicable and/or in the interests of the NACC to participate. The Executive Director may recommend an independent position, which may be different than the applicant’s original request.
- iii. If the Executive Director rejects the request, the request shall be denied and the applicant notified.
- iv. If the Executive Director accepts the request, the request shall be presented to the *Amicus Curiae* Workgroup.

#### **c. Review by the Amicus Curiae Workgroup:**

- i. The *Amicus Curiae* Workgroup (“Workgroup”) shall be comprised of attorneys, the majority of whom shall be NACC Board members. Board members shall be appointed to the Workgroup by the President of the Board of Directors. Non-Board members shall submit an application to join the Workgroup and may be appointed after review and approval by the Executive Director.

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<sup>1</sup> Adopted: October 9, 1994. Amended: (1) June 20, 2000; (2) July, 2004; (3) April 21, 2007; (4) April 30, 2011; (5) August 16, 2012 and (6) June 4, 2020.

- ii. Upon request of the Executive Director, Workgroup members shall agree, in writing, to confidentiality and conflict of interest terms. If a member declines to do so, the Executive Director maintains discretion to exclude said member from a specific case or from the workgroup entirely.
      - iii. Each member of the Workgroup will review the application and vote on whether to proceed. Discussion of the case may occur via electronic communication or, at the discretion of the Executive Director or her designee, a telephone call or virtual meeting. Workgroup members may recommend an independent position, which may be more narrow, broad, or nuanced than the applicant's original request.
      - iv. Unless the Executive Director deems the decision time-sensitive, the Workgroup will be provided at least 5 business days to review the case.
      - v. If the case is approved by 2/3 of voting members of the Workgroup, it is presumed NACC will join the case subject to board notification. If the case is approved by a simple majority, but not a full 2/3 of voting members of the Workgroup, the case shall proceed to the Board of Directors. Failure to participate or render a vote will be deemed an abstention.
    - d. Review by the NACC Board of Directors:
      - i. Upon approval by 2/3 of the Workgroup, the Board will be notified of NACC 's intent to submit the amicus brief. Board members will be provided five business days to object and request review by the full Board. If no board members request review, NACC will join the case.
      - ii. If approved by a majority (but not 2/3) of the Workgroup, or upon Board member request, the Executive Director or designee shall notify the Board of Directors and allow time for discourse. This may occur via electronic communication or, at the discretion of the Executive Director or her designee, a telephone call or virtual meeting. Board members may recommend an independent position, which may be different than the applicant's original request.
      - iii. Unless the Executive Director or her designee deems the decision time-sensitive, the Board of Directors will be provided at least 5 business days to review the case. Board members may consult with one another, staff, or members of the Workgroup during the review.
      - iv. If 2/3 of of Board members voting approve the case, the case is accepted.
- III. **Procedures for Review of Final and Subsequent Briefs**
- a. NACC participation in a case remains conditional until approval of the final *amicus curiae* brief.
  - b. Once the brief is final, the Executive Director (or designated staff) shall review the brief and reject or approve it prior to filing.
  - c. Once a case is approved, NACC may continue to participate as amicus as the case reaches higher appellate courts. Reconsideration by the Workgroup or Board is not required.
- IV. **Conflicts of Interest**
- a. Workgroup and Board members deliberating *amicus curiae* decisions shall immediately disclose potential conflicts of interest to the Executive Director. Workgroup members shall also disclose such conflicts to the Chair of the Workgroup; Board members shall also disclose such conflicts to the President of the Board of Directors. The Executive Director, in consultation with the President of the Board, shall determine if recusal is required in accordance with NACC's policies and procedures.
- V. **Executive Director's Authority to Act in Amicus Matters**

- a. Unless the full Board votes to reject participation in an amicus case as set out above, the Executive Director has the continuing authority to determine NACC participation throughout the course of an amicus matter. For example, the Executive Director may discontinue NACC participation in an amicus matter should participation become impracticable or not in the interests of the NACC.