


Amicus Briefing Why & How

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March 11, 2010

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Amicus Briefing

- Why write?
- Preparing the infrastructure
- Selecting cases
- Selecting positions
- Coordinating with parties and other amici
- Drafting



Why Write?

- **Business Entities & Individuals**
 - Direct interest in the outcome
 - Offer a unique, learned perspective
 - May take positions and make arguments the parties cannot present



Why Write?

- Legal Associations
 - Represent individuals with an indirect interest in the outcome
 - Offer a more balanced perspective based on a consensus of diverse viewpoints
 - May take positions and make arguments the parties cannot present

Preparing the Infrastructure

- Committee should vet cases
 - Consider separate amicus committee
 - Or, merge into existing committee (e.g., litigation)
- Develop internal procedures
 - Consider requiring committee recommendation and board approval of cases



Preparing the Infrastructure

- Need clear policy on decision-making authority
- Delicate balance
 - Need appropriate input, review, and approval
 - But, don't let the bureaucracy strangle the process



Preparing the Infrastructure

- Publicize procedures
 - Tell parties how to request amicus support
 - Tell members how to submit proposals
- Keep members informed
 - The association is the client



Selecting Cases

- Cases will come to you
 - Parties frequently solicit amicus support
 - Publicize procedures so they can find you
- Members should submit proposals too
 - Committee members
 - Association members



Selecting Cases

- Proactive vs. Reactive
 - Proactively identify important issues and then identify cases on point as they work up the system
 - React to important cases as they arise
- Consider a balanced approach that includes some of each

Selecting Cases

- Consider supporting/opposing rehearing en banc at the Federal Circuit

- Chief Judge Michel:

- I also favor amicus briefs in selected cases supporting or opposing rehearing en banc. At that stage amicus briefs, presently rare, can be especially helpful.*

State of the Court Speech, June 19, 2009

- Recent rule changes provide more time for amici to file briefs



Selecting Cases

- Commit to cases early
 - Allow plenty of time for drafting and review
 - Drafting by committee takes longer
- Use resources wisely
 - Briefing requires a lot of (volunteered) time
 - Don't over-commit
 - Spread opportunities around



Selecting Positions

- Positions should reflect association
 - Consistency in purpose
 - Consider repository of past briefs
 - Review past positions; the Court will remember
 - Representation of majority
- Supporting a party?
 - May not support party on every issue
 - May not support a party at all

Coordinating with Parties and Other Amicii

- Early contact is key
- Avoid duplicating arguments
 - No “me too” briefs
 - Craft arguments from association perspective
- Play to your strengths—some amicii are in better positions to present certain arguments



Drafting

- Best to assign one lead author
 - Close-knit team of 2 or 3 may work too
 - But, drafting by committee is a challenge
 - Maintain consistency
 - One voice

Drafting

- Committee should approve positions early
- Consider circulating outline early for committee review/approval
- If draft must be approved, provide time for revisions after review



Drafting

- Establish and follow a rigid briefing schedule
- Leave plenty of time for final review
 - It will take longer than expected
 - May need time to deal with unexpected disagreements



Drafting

- Study the court rules on amicus briefs
 - Special requirements (e.g., statement of the amicus curiae)
 - Different page/word limitations
 - Filing deadlines
 - Timing requirement to seek advance consent from parties

Drafting

- Consider the details well in advance
 - Who will appear on the brief?
 - Who will maintain the master draft?
 - Who will arrange for binding and filing?
 - Who will buy the drinks when the court rules in your favor?

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