

Client Alert

Newly Released Supreme Court Guidelines for *Amicus Curiae* Briefs

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Last month, the U.S. Supreme Court Office of the Clerk released new guidance in the form of a memorandum directed toward proposed *amici* seeking to appear before the high court. The memorandum elaborates on the Court's "core requirements" for *amicus* briefs set forth in Rules 33.1, 34, and 37, and provides more detailed guidance on issues ranging from the requirement for leave to file, notice, and situations in which multiple amici may seek to participate in a case. Although rules for *amicus curiae* appearances vary among federal and state courts around the country, courts often follow or look for guidance to the U.S. Supreme Court's approach in determining their own approaches to *amicus* practice.

As "friends of the court," *amici* propose briefs that "bring[] to the attention of the Court relevant matter[s] not already brought to its attention by the parties..." S.C.R. 37. *Amicus* participation is desirable because it allows clients to offer unique industry perspectives or highlight particular considerations the parties' briefs did not address.

Putting the merits of *amicus* briefs to the side, complying with court rules governing *amicus* participation can be complex, and requires attention to detail as well as conformity with technical requirements. Proposed *amici* oftentimes must show how and why their brief will help the court. Classic reasons for *amicus* participation include a desire to supplement the parties' briefing, to present public policy considerations, and to advance the interests of parties not directly involved in the case but with strong interests in its subject matter. *Amicus* briefs may be rejected if they do not strictly comply with all rules and guidelines.

The Supreme Court's guidelines for potential *amici* are a useful place to start for parties considering *amicus* participation, as they serve as a model for many other federal and state courts. Key guidelines articulated in the U.S. Supreme Court Office of the Clerk's newly released memorandum include:

- **Consent and Motions for Leave to File:** The Supreme Court does not require motions for leave to file *amicus* briefs if all parties consent. This is relatively unique to the Supreme Court, as most other jurisdictions require that the parties request leave to file and state their interests.
- **Notice to the Parties:** *Amici* seeking to file at the certiorari stage must notify all parties of their intent to file *at least 10 days* prior to the deadline to file. This is an example of a specific rule that can trip up potential *amici* if the rules are not meticulously followed.
- **Contents:** *Amicus* briefs are more limited than party briefs, but must include separate sections stating the interests of *amicus*, a summary of the argument, the argument itself, and a conclusion.
- **Additional Amici:** Oftentimes, many *amici* with a common interest will join a single proposed brief, which is permissible and encouraged. But the Court's guidelines specify that "[a]dditional *amici* may not

be added as joining a brief after it has been submitted for filing,” and “[a]n individual *amicus* may not join in more than one brief at each stage (i.e., cert and merits) of a given case.”

- **Word Limits:** Word limits must be strictly complied with, and *amicus* briefs that exceed limitations will often be rejected. When *amici* seek to capitalize on all allowable space, it is important to note the sections of briefs that are and are not included in word counts. Also, Supreme Court brief word limits vary depending on the stage in which the brief is submitted. *Amicus* briefs submitted at the certification stage are limited to 6,000 words, while private party *amicus* briefs submitted at the merits stage are limited to 8,000 words. Footnotes count towards the word limits.
- **Interests of *Amicus Curiae*:** The first section of *amicus* briefs must state the interests of the *amicus*, but *amici* should note that the words in the first section also count toward the word limit. Experienced advocates often shape the statement of interests of *amicus* to reinforce their clients’ goals on the merits.
- **Rule 37.6 Disclosures:** The first footnote on the first page of an *amicus* brief must include a disclosure stating “whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of a brief,” and identifying “every person other than the *amicus* ... who made such a monetary contribution.” In this regard, the best practice is to state affirmatively “that no such contributions were made, if this is in fact true.”
- **Prohibition on Certain *Amicus* Briefs:** Potential *amici* should note that there are circumstances when the rules do not permit *amicus* briefs. For instance, the guidelines make clear that the Court will not accept reply briefs from an *amicus curiae*; *amici* should ensure all points and counterpoints they wish to address are included in the original brief. Additionally, *amici* may not file briefs in connection with petitions for rehearing before the Supreme Court.

Crowell & Moring LLP maintains an active *amicus* practice in a variety of areas, and has appeared in almost every state high court and federal appellate court nationwide in cases that may create important legal precedents.

Read the full guidelines for *amici curiae* published by the Office of the Clerk [here](#).

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