

**AMICUS CURIAE BRIEF POLICY**

Approved by the Board of Governors 9/29/17

**I. BACKGROUND**

The Washington State Bar Association (Bar) amicus curiae program was established in 1998, when a ten-member Amicus Curiae Brief Committee was formed by the Bar's Board of Governors (BOG). In 2016, the BOG voted to sunset the Amicus Curiae Brief Committee at the end of the 2017 fiscal year, with the BOG's Executive Committee to assume the responsibility for reviewing and making recommendations on requests for the Bar to participate as amicus. This policy establishes the procedures and substantive criteria for the Bar's consideration of requests for amicus participation.

**II. GENERAL PRINCIPLES**

- A. Authority. The Executive Committee will review all requests for amicus participation and, except as otherwise provided in this policy, will provide a recommendation to the BOG on whether the Bar should file an amicus brief. Except as otherwise provided in this policy, the BOG will make the ultimate decision on whether the Bar will file an amicus brief.
- B. Independence. The Bar will remain independent of the parties, including the party litigant who requests amicus curiae participation by the Bar. Maintaining its independence will best serve the interest of the WSBA in furthering a credible and independent amicus curiae program that focuses on the values and principles of general application to the Bar.
- C. Preparation and Signing of Brief. The Executive Committee will oversee and assist with the preparation and filing of the brief as necessary. Any amicus brief submitted to a court will be signed by the author of the brief and by the President of the Bar or his or her designee.

**III. CRITERIA FOR PARTICIPATION**

- A. Area of Substantial Interest to the Bar. Before the Bar will participate as amicus curiae, the case must concern issues of substantial interest to the Bar. Cases are considered to be in an area of substantial interest to the Bar when issues in the case: (1) concern the independence or integrity of the judiciary or the Bar; (2) concern the

effectiveness or accessibility of the legal system; (3) concern the practice or business of law; (4) concern diversity or equality in the legal profession; or (5) are determined by 75% of the total membership of a section or other Bar entity to be of substantial interest to the Bar.

- B. Necessity of Amicus Brief. The Bar will consider whether briefs already before the court provide the court with a complete picture of how the particular issue and decision will impact the interests of the Bar as set forth in this policy. The Bar will generally decline to participate as amicus curiae where the issues of concern to the Bar are already fully developed.
- C. Brief Standards. The Bar intends that any amicus brief it files will be of high quality. The Bar may decline to file an amicus brief in cases where lack of time or other considerations may compromise the quality of the brief.
- D. Stage of the Proceedings. Unless there are exceptional circumstances, the Bar will not participate as amicus curiae at the trial court level.
- E. Request from Appellate Court. Unless there are exceptional circumstances, the Bar will honor a request from an appellate court for the Bar to file an amicus brief.
- F. Other. The Bar may also consider the anticipated costs, if any, to the Bar; whether the Bar will be allotted time for oral argument; and any other consideration the Bar deems relevant in deciding whether to file an amicus brief.

#### **IV. PROCEDURE FOR REQUESTING AMICUS CURIAE PARTICIPATION**

- A. Contents of Request. A party requesting amicus curiae participation by the Bar must include the following in its request:
  - 1. A statement that sets forth the specific legal issue(s) that the requesting party believes the Bar should address;
  - 2. A survey of significant cases that address the issue(s);
  - 3. A statement explaining how the legal issue(s) relate to the criteria for participation in Section III(A) of this policy;
  - 4. The deadline for filing an amicus brief and any other relevant court dates;
  - 5. Whether time will be allowed for oral argument by the Bar.
  - 6. Copies of all appellate briefs filed in the case.

The requesting party should also be prepared to provide a copy of the record on review if requested by the Executive Committee.

- B. Timing of Request. Requesters are strongly encouraged to make their requests sufficiently far in advance so that the Executive Committee has a reasonable timeframe to consider the request and make a recommendation to the BOG, the BOG has an opportunity to receive and act on the recommendation, and the Bar has sufficient time to obtain a quality brief prior to the due date for the filing of amicus briefs in the case. For reference, the schedule of BOG meetings can be found on the Bar's website. The Executive Committee generally will not make any recommendation to the BOG until after the requesting party has filed its initial appellate brief.
- C. How to Submit a Request. Requests must be in writing and may be made by mail or email. The mailing address for requests is Executive Director, Washington State Bar Association, Attn: Amicus Request, 1325 Fourth Avenue, Suite 600, Seattle, Washington 98101-2539. Email requests should be sent to [questions@wsba.org](mailto:questions@wsba.org) with "Amicus Request" in the subject line.
- D. Records Disclosure. Requesters should be aware that amicus requests and all subsequent correspondence with the Bar regarding the request are Bar records subject to disclosure under Washington General Rule (GR) 12.4, and that notice of the request may be posted on the Bar's website and otherwise publicized as described below.

## V. **PROCEDURE FOR ACTING ON REQUESTS**

- A. Necessity of Complying with Procedures. An amicus request from a private party will not be considered if the requesting party fails substantially to comply with the procedures set forth in Section IV. The President and Executive Director of the Bar are authorized to make this determination and notify the requester that no action will be taken on the request. The President and Executive Director are further authorized to deny a request on the grounds that a quality brief cannot be obtained in the time available.
- B. Notice. The Executive Committee will attempt to notify all parties of the receipt of the request prior to Committee action, to the extent practicable. Notice will also be posted on the Bar's website and sent to appropriate Bar sections and committees, to the extent practicable. Such notice will invite comment on whether the request meets the criteria set out in this policy and any deadline for comment, provided that the Executive Committee may make its recommendation to the BOG prior to receipt of comment by parties or others.
- C. Executive Committee Action on Request. A properly presented request will be acted upon at the earliest feasible date by a quorum of the Executive Committee.

D. Recommendation to the BOG. Upon obtaining a recommendation supported by a quorum of the Executive Committee, the President will cause a written recommendation to be prepared and presented to the BOG. The recommendation will include:

1. An affirmative or negative recommendation;
2. A brief analysis of the issue(s) raised by the case, an explanation of why the Executive Committee believes that amicus curiae participation is warranted or should be declined and, if the recommendation is affirmative, a statement of the position the Executive Committee believes the Bar should take;
3. If the recommendation is affirmative, a statement of costs associated with participation and suggestions regarding appropriate individuals to author the brief;
4. If the recommendation is affirmative, a statement addressing whether the Executive Committee believes the Bar should present oral argument and whether the requesting party will surrender oral argument time in order to allow the Bar to argue.

E. Emergency Procedure. Where the issues raised in a case have substantial impact on the members of the Bar and timing issues make consideration of a request in the normal course impracticable, the Executive Committee may recommend that the President and Executive Director act on an amicus request.