

AMICUS CURIAE BRIEF POLICY

Approved by the Board of Governors 2/13/99; amended 6/3/05; 9/14/06

A. CRITERIA FOR WASHINGTON STATE BAR ASSOCIATION AMICUS CURIAE BRIEFS

The Washington State Bar Association (WSBA) Amicus Curiae program was established in 1998 when a ten member Amicus Curiae Committee was formed by the Board of Governors of the WSBA. The guidelines below address Committee consideration on the involvement of the WSBA as amicus curiae. The policy standards guide WSBA participation as amicus curiae. The following section addresses procedure for requesting participation of WSBA as amicus curiae.

B. AMICUS CURIAE POLICY

- 1. <u>Independence.</u> The WSBA will remain independent of the parties, including the party litigant who requests amicus curiae participation by the WSBA. Maintaining its independence will best serve the interest of the WSBA in furthering a credible and independent amicus curiae participation program that focuses on the values and principles of general application to the WSBA.
- 2. <u>Authority.</u> The Amicus Curiae Committee shall review all requests for amicus curiae participation by the WSBA, and provide a recommendation to the Board of Governors. The Board shall make the ultimate decision on whether the WSBA shall file an amicus curiae brief.
- 3. Area of Substantial Interest to the WSBA. Before the WSBA will participate as amicus curiae, the case must concern issues of substantial interest to the WSBA. Cases are considered to be in an area of substantial interest to the WSBA when issues in the case: (a) concern the independence or integrity of the judiciary or the bar; (b) concern the effectiveness or accessibility of the legal system; (c) concern the practice or business of law; (d) concern diversity or equality in the legal profession; or (e) are determined by 75% of the total membership of the governing body of a Section of the WSBA to be of substantial interest to the WSBA.
- 4. <u>Necessity of Amicus Brief.</u> The Amicus Curiae Committee 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 WSBA as set forth in this policy. The WSBA will generally decline to participate as amicus curiae where the issues of concern to the WSBA are already fully developed.

- 5. <u>Brief Standards.</u> The Amicus Curiae Committee shall ensure an amicus curiae brief filed by the WSBA is of high quality. The Committee may decline to file an amicus brief in cases where lack of time or other considerations may compromise the quality of the brief.
- 6. Request from Appellate Court. The WSBA will honor a request from an appellate court barring exceptional circumstances.
- 7. <u>Costs.</u> The recommendation to the Board of Governors will include the anticipated costs, if any, to the WSBA.

C. PROCEDURE FOR REQUESTING AMICUS BRIEF PARTICIPATION

- 1. The request shall be directed to the Amicus Brief Committee, Washington State Bar Association, 1325 4th Ave., Ste. 600., Seattle, WA 98101-2539 (or by e-mail to questions@wsba.org.
- 2. Unless there are exceptional circumstances, an amicus curiae request will not be granted for participation at the trial court level.
- 3. The requesting party shall provide the committee with the following information in its request:
 - a. A statement that sets forth specific legal issue(s) that the requesting party believes the WSBA should address;
 - b. A survey of significant cases that address the issue(s);
 - c. A statement explaining how the legal issue(s) relate to the WSBA Amicus Curiae Policy.
 - d. Whether time will be allowed for oral argument by the WSBA.
- 4. The requesting party shall provide copies of all appellate briefs filed in the case and, if requested by the Committee, the record on review.
- 5. The Amicus Curiae Committee will not make a recommendation to the Board of Governors before the requesting party has filed its initial appellate brief.

D. AMICUS COMMITTEE: INTERNAL PROCEDURES

- 1. <u>Necessity of Request Complying With Procedures</u>: A request for amicus curiae may not be considered from a private party if the requesting party fails substantially to comply with the published procedures for requesting amicus curiae assistance.
- 2. <u>Notice</u>: The Amicus Curiae committee will attempt to notify all parties of the receipt of the request prior to committee action, to the extent practicable. Notice shall be posted on the WSBA web site and may also be given to appropriate WSBA Sections and committees. The notice will invite comment on whether the request meets the

criteria set out in this policy and any deadline for comment, provided that the Amicus Curiae committee may make its recommendation to the Board of Governors prior to receipt of comment by parties or others.

- 3. <u>Records Disclosure</u>: All correspondence submitted to the Committee, including the original request, is subject to disclosure pursuant to WSBA Bylaws Article XIII.
- 4. <u>Committee Action on Request</u>: A properly presented request shall be acted upon at the earliest feasible date by a quorum of the Amicus Curiae committee. The chair, or his or her delegate, shall insure that as many members of the committee as are available shall be notified of the request and provided with appropriate materials to evaluate the issue of whether an affirmative recommendation shall be made to the WSBA Board. The committee may meet via telephone conferencing when necessary to expedite the process or for efficiency reasons.
- 5. <u>Content of Recommendation</u>: Upon obtaining a recommendation supported by a quorum of the committee, the chair of the committee shall cause a written recommendation to be prepared and presented to the WSBA Board of Governors. The recommendation shall include:
 - a. An affirmative or negative recommendation;
 - b. A brief statement of why the committee believes that an amicus curiae participation is warranted or should be declined;
 - c. A brief analysis of the issues raised by the case and a recommendation stating the position the committee believes should be taken by the WSBA;
 - d. A statement of costs associated with complying with the request and suggestions regarding appropriate individuals to author the brief;
 - e. Whether or not the Committee believes that the Association should present oral argument and whether the requesting party will surrender oral argument time in order to allow the Association's participation.
- 6. <u>Emergency Procedure</u>: Where the issues raised in an appeal have substantial impact on the members of the WSBA, the committee or the Board of Governors may recommend that the President of the bar along with the Association's Executive Director act upon an amicus curiae request. No request for participation shall be granted if either the Association or the Committee concludes that a quality brief cannot be obtained in the amount of time available.
- 7. <u>Preparation and Signing of Brief.</u> The Amicus Curiae committee will oversee and assist with the preparation and filing of the brief as necessary. Any amicus brief submitted to a court shall be signed by the author of the brief and by the President of the Washington State Bar Association or his or her designate.