

AJS

Board of Directors Handbook

Amicus Brief Policy

The American Judicature Society will file or join an amicus brief only in a case that presents a significant issue implicating the Society's mission of bringing a public perspective to the justice system and securing and promoting an independent and qualified judiciary and fair system of justice. The Society will file or join a brief only when it may be able to present the Society's position more effectively than the parties, provide a perspective or information that would not otherwise be presented, or when for other reasons the Court may be interested in the Society's position. The Society will not file or join a brief merely to reiterate arguments advanced by the parties.

Briefs will be filed only in the name of the Society, and not in the name of an entity or person associated with the Society. The Society will usually file or join an amicus brief only at the appellate level, before the highest court in which the issue is likely to be determined, and when an appeal is to be heard on the merits, but it may file or join a brief in support of or in opposition to a petition for leave to appeal or certiorari when that is deemed appropriate.

The Society will only file a brief when it can secure the assistance of qualified outside counsel to write the brief. The Society will not pay attorney's fees for the preparation or review of the brief, but will pay the costs of reproducing, filing, and serving the brief. The Society will not submit an amicus brief on its own behalf, or join in an amicus brief initiated by others, where counsel preparing the brief have been retained by, or will be compensated directly or indirectly by, a party in the litigation.

The President of the Society's Board of Directors will appoint five non-judge members of the Society's Board or National Advisory Council to the standing amicus committee and designate one member of the committee to be chair. If a committee member is unable to participate in a particular request, the Board chair may designate an alternate. The President shall designate a staff liaison for the standing amicus committee.

If a request to file or join an amicus brief involves an issue of forensic science and public policy, the requirements and procedures of this amicus brief policy shall apply except that the co-chairs of the National Commission on Forensic Science and Public Policy shall choose four members of the Commission to be added to the amicus committee for purposes of that request. The President may designate an employee of the Society's Institute of Forensic Science and Public Policy to act as staff liaison for that request.

The Request that the Society File a Brief

Any person or organization may request that the Society file or join an amicus brief. Such requests shall be made by electronic filing to the staff liaison for the standing committee. A request must attach the judgment, order, or decision appealed from and any accompanying opinion, the brief or draft brief of the party whose position the Society is being asked to support, and any opposing briefs already filed. The request should also:

- Include a draft or outline of the proposed or suggested position to be taken by the Society.
- Identify the due date for the proposed amicus brief and the court in which it must be filed.
- Explain why the issues presented are appropriate, as well as important enough, for the Society to address in an amicus brief.
- Disclose any interest of any person or organization requesting the filing of the brief, or of any interested client represented, in the issues in or outcome of the case.
- Recommend counsel who are qualified, able, and willing to prepare the proposed brief in the time available if requested to do so by the Society without charging attorney's fees.
- List the names and addresses of other persons or organizations who have submitted or are considering submitting an amicus brief

The Society will consider requests to join an amicus brief to be filed by other not-for-profit organizations, but will not usually join such a brief. A request for the Society to join an amicus brief must indicate what other organizations are being asked to join, and the requesting person or organization must keep the Society informed of what organizations have agreed to join as amici. The Society's decision to join an amicus brief being filed by other organizations is conditional and may be withdrawn at any time before the brief is filed by a vote of the majority of the amicus committee. For example, without limitation, the amicus committee may determine that the brief does not adequately address issues of interest to the Society or that the Society should not be associated on a brief with one or more of the other organizations that are joining as amici.

The Functions of the Board of Directors and the Amicus Brief Committee

After meeting by conference call, the amicus committee may recommend to the Board of Directors that the Society file or join an amicus brief if three members of

the committee agree that: (1) the case presents a significant issue implicating the Society's mission; (2) the brief would directly address that issue consistently with the Society's position; (3) adequate resources are available to prepare a brief, including the cooperation and assistance of qualified counsel recommended by the committee; and (4) sufficient time is available to prepare and file a brief.

No member of the amicus committee or the Board of Directors shall participate in a decision concerning the filing of an amicus brief on behalf of the Society if that member, or a person or organization with which that member is closely affiliated, has an interest that might be materially affected by the litigation.

If the amicus committee recommends that the Society file or join an amicus brief, that recommendation and supporting materials will be transmitted electronically to the non-judge, non-interested members of the Society's Executive Committee who should indicate their agreement or disagreement with the recommendation by telephone or e-mail.

The recommendation shall be deemed approved unless one member of the executive committee votes to disapprove the recommendation, in which event the Society's non-judge members of the Board of Directors who do not have an interest in the case shall be polled. If the recommendation is submitted to the Board, the decision of a majority of the Board members eligible to vote shall determine the result.

If the Executive Committee or Board of Directors authorizes the filing of a brief, the staff liaison, consulting as appropriate with the chair of the amicus committee and the President, shall arrange for the writing of the brief. The amicus committee shall review a draft and determine whether the brief, including any modifications the committee may propose, is of high professional quality, fairly represents the position of the Society, clearly and adequately addresses the issues of interest to the Society, and will contribute significantly to the consideration of the issues presented. If not, no brief shall be filed on behalf of the Society.

A brief shall be filed only with the approval of the amicus committee and the officer who signs the brief. The checking, duplication, filing, and service of the brief shall be supervised by the authors.

All briefs filed by the Society (including those in which the Society joins other amici) shall contain the following disclaimer:

As a matter of policy and procedure, no judicial member of the American Judicature Society participated in the decision to file this brief or in its preparation, and this brief was not circulated to any judge-member of the Board of Directors, Executive Committee, or National Advisory Committee prior to filing. No inference should be drawn that any judge member of the Society's Board of Directors has participated in the adoption or endorsement of the positions in this brief.