

Seeking Effective Amicus Support

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We are all
in the same
boat.



Identifying Worthy Issues

- Broad Appeal
- Relevant
- Issue of First Impression
- Quality of Briefing
- Expound on Arguments

Criteria

When seeking support from an organization, such as TCAA, your request should address the organization's criteria.

TCAA's Criteria

- Wide applicability to a broad range of cities of various sizes throughout the state?
- Does the case address a core municipal issue?
- How important is the case when compared to other cases?
- Is the case one that city officials care about more than any other group?

Keep your
friends your
friends.



Helping Your Friend

- Coordinate in Advance
- Don't Ask at the Last Minute
- Send Supporting Materials Immediately
- Make it Easy!
- Limit What You Ask For

Make Your Brief Effective

- An effective amicus brief must have all the characteristics of any good legal brief – good, concise writing, with accurate cites to the law and facts.
- In addition, an amicus brief writer must strive to avoid redundancy and provide perspective.

Avoiding Redundancy

- An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court.
- An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.

-- *Supreme Court Rule 37*

Avoiding Redundancy

- The brief should avoid the repetition of facts or legal arguments contained in the principal brief and should focus on points either not made or not adequately discussed in those briefs.
- Any non-conforming brief may be stricken, on motion or sua sponte.

-- 5TH CIR. R. 29.2



CUT

AND

PASTE



PERSPECTIVE

- Provide unique perspective.
- Practical information otherwise unavailable.
- Contextual information.

Avoid “the sky
is falling”
arguments.



Texas Rules - TRAPS

- Comply with rules for other briefs.
- Indentify the person or entity on whose behalf the brief is tendered.
- Disclose source of fee paid.
- Certify that all parties have been served.

-- TRAP 11

Rejection . . .

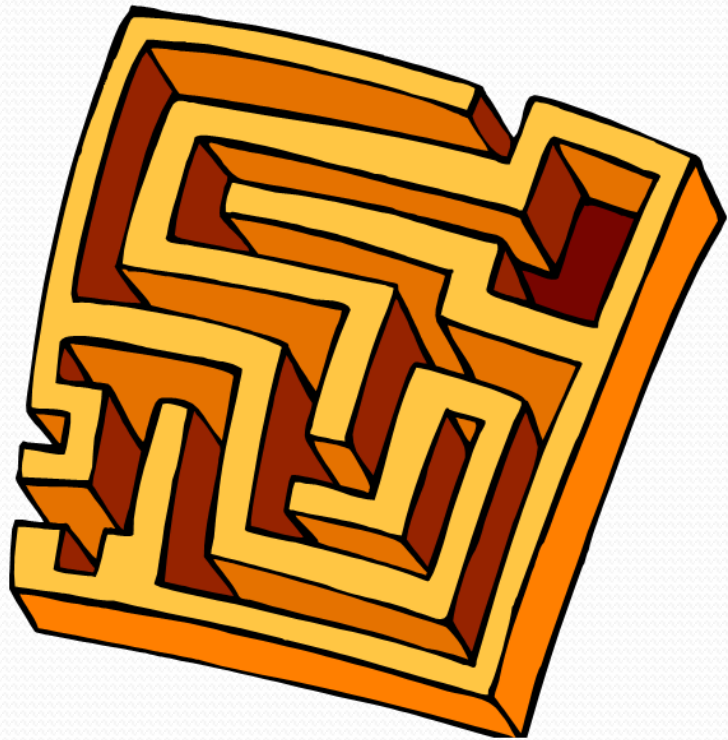
- Rule 11 also allows for the rejection of amicus briefs.
- One example – 17 page brief emailed to the court the day before oral argument, with hard copy sent after oral argument.

Request for Amicus Briefs

- Rare.
- Texas Supreme Court requested factual information in *City of San Antonio v. City of Boerne*.
- Waco Court of Appeals most active in requesting amicus briefs.
- Often issues of public concern – water rights, suspension of justice of the peace, novel constitutional issue.

Federal Rules – FRAP 29

More
arduous
than state
rules.



Filing Without Leave or Consent

The following governmental entities may file an amicus brief without consent of the parties or leave of court:

- United States or its officers or agencies
- States
- Territories
- Commonwealths
- District of Columbia

What about cities?

- Municipalities should obtain consent of the parties or leave of court. -- FRAP 29(b).
- The motion must be accompanied by the proposed brief.
- The motion must state why the brief is desirable.

Misc. Rules

- Contents & Form – Must include a “concise” statement of the identity of the amicus curiae, its interest in the case, and source of its authority to file.
- Length – ½ the length allowed for parties.
- Reply Brief – No.
- Oral Argument – Unlikely.

Time for Filing

- “within 7 days after the filing of the principal brief of the party whose position the amicus brief will support” -- 5th CIR. R. 29.1.
- If the amicus brief does not support either party, it must be filed “no later than 7 days after the appellant’s or petitioner’s principal brief is filed.”
- A court may grant leave for later filing.

What color is your cover?

In federal courts
of appeal, it
must be green.



SCRAPs

- Printed booklet format (6 1/8 X 9 1/4).
- 6,000 words limitation at petition stage.
- Cream colored cover at petition stage.
- 9,000 words limitation at merits stage.
- Light green cover if supporting petitioner or neither party.
- Dark green cover if supporting respondent.

SCRAPs . . .

- “Motions to extend the time for filing an amicus curiae brief will not be entertained.”
- Must give at least 10 day advance notice to counsel of intention to file - or file brief at least 10 days in advance.
- Motion for Leave or consent of parties required for filing.
- Motion for Leave is not required for a city, when filed by “an authorized law officer”
- No Reply Brief for Amicus Curiae.
- No Amicus Brief on Petition for Rehearing.

Sample Amicus Briefs

- Available on TCAA website.
- *Matbon, Inc. v. Hutton* – Paid or Incurred
- *Sanders-Burns v. Plano* – Statute of limitations for suits against officials in individual capacity.
- *Smith v. Barrow* – Test for determining “clearly established law” in qualified immunity analysis.

Good Luck

