

FCBA Amicus Policy (approved May 2021)

This policy seeks to address conflicts of interest that may arise in the consideration of amicus requests or the preparation of amicus submissions (collectively “Amicus Activities”). This policy seeks to ensure that individuals with a potential conflict of interest do not participate in discussions or voting regarding Amicus Activities on behalf of the FCBA, while also balancing the FCBA’s strong interest in robust discussion of Amicus Activities involving a broad range of viewpoints reflecting the FCBA’s diverse membership. This policy seeks to provide clear guidance as to where an individual has a direct conflict of interest and therefore should not participate in Amicus Activities, and where an individual may participate in Amicus Activities as long as they can do so impartially.

An FCBA Committee member or Board member (hereinafter, “Amicus Member”) shall not participate in Amicus Activities related to a case in which they have a conflict of interest, including any case in which the Amicus Member, the Amicus Member’s firm, or the Amicus Member’s company:

- (i) is a party in the case;
- (ii) is related to a party to the case (e.g., a parent or subsidiary for a corporate party);
- (iii) has a direct financial interest in the outcome of the case; or
- (iv) represents an entity that meets (i)-(iii) in the case.

In general, an Amicus Member shall not be deemed to have a conflict precluding them from participating in Amicus Activities related to a matter merely because the Amicus Member’s company (or a related entity), firm, or client (or a related entity), has an indirect interest in, or has taken a position regarding an issue relevant to, the case. Likewise, an Amicus Member shall not be deemed to have a conflict precluding them from Amicus Activities related to a matter merely because the Amicus Member’s firm represents a party to the case in other cases or matters (so long as the firm is not representing a party in the particular case at issue).

In all cases, Amicus Members should recuse themselves from discussion of any Amicus Activities if they cannot do so impartially. Amicus Members are responsible for determining whether any other state or other ethical rule applicable to the Amicus Member would bar the Amicus Member from Amicus Activities.

Where it is the decision of the FCBA to participate in an amicus filing, amicus briefs will clearly indicate that they are filed on behalf of the FCBA and do not constitute the views of the organizations to which Amicus Members belong or to any government agency or tribunal to which any FCBA member is affiliated.