

## **Amicus Committee Process: Process where Recommendations to File are Made**

**This process will apply for the preparation of Amicus Committee recommendations that the Association file written submissions and for the preparation of those written submissions. In the event the Committee makes a recommendation to file, the process requires the establishment of a review team for that filing. Although the process makes provision for extraordinary circumstances (Para. 4), it is intended that those would be truly exceptional instances and that the process set forth would apply in the usual context.**

**The review team will include the scrivener and another Committee resource, as well as two Board members. At the time of its decision to approve a Committee recommendation to file a written document, the Board will consider and act upon the proposed scrivener and Committee reviewer as well as designate the two Board review members.**

**Review of the written submission will be two-step. Once the scrivener and Committee reviewer have secured approval of the Committee chair(s) for the written submission, it will be forwarded to the Board review members. It is expected that the written submission will be of quality to file at the time it is forwarded to the Board review members. The Board members will then provide any further input needed to the other members of the team with regard to the Board's direction concerning the goals of the writing.**

**Further, with regard to the written submission, although the two Committee members (scrivener and Committee reviewer), Committee chair(s), and two Board members have responsibility for review and recommendation for the Board's final action, it is anticipated that the review team would solicit and consider any timely input from other Committee and Board members. The process cannot be delayed awaiting such additional input.**

### **1. Contents of Memorandum Recommending Filing of Brief**

#### **a. Contents of Recommendation Memorandum --**

In instances where the Amicus Committee recommends that the Association file or participate in proceedings, the Committee's recommendation memorandum for the Board will, in addition to the details of the Committee's substantive recommendation, include:

- The name and address of the proposed scrivener for the brief;
- The name and address of a reviewer ("Committee reviewer"); and,
- Specific dates by which:
  - The draft brief will be provided to the "Board reviewers" (below) for their input (no later than 14 days before the date on which the brief is due to be filed);
  - The draft brief will be submitted for forwarding to the Board (no later than 7 days before the date on which the brief is due to be filed); and,
  - The brief must be filed; and,
- The names, firms, and addresses of counsel representing existing parties in the dispute, and a statement indicating that the non-requesting party has been contacted and stating whether that party has consented to the proposed amicus filing.

The memorandum recommending participation will only be complete for submission to the Board upon inclusion of all of these items.

#### **b. Timeline Requirements**

If these timeline requirements for Board action are inconsistent with existing filing schedules in the dispute, the Committee shall -- if the Association's participation has been requested by one or more parties -- advise the parties at the first opportunity of that fact. The party(ies) may determine to adjust the briefing schedule to allow for the Association's timely

review. It should be clear that any adjustment in schedule does not limit the Board's ultimate decision on whether to file or the contents of a given brief.

## 2. Board Action

### a. On Recommendation to File

In the event the Board endorses the recommendation to file, the Board will also consider the members of the review team. It will consider the recommended scrivener and Committee reviewer and may endorse those recommendations or take further action. At the same time, the Board will designate two Board members who will serve as "Board reviewers" on behalf of the Board.

The Board, through its two responsible Board members, shall provide to the scrivener, Committee reviewer, and the Committee chair(s) a statement of goals providing guidance for drafting the brief. This statement might be, for example and without limitation, either a simple endorsement of the Committee's recommendation or an enumeration of any specific matters of particular interest to the Board. The scrivener and Committee reviewer shall request clarification of those goals or further guidance from the two responsible Board members, if needed, before beginning to draft the brief. Further, the Board will note that drafting input is welcome from any other Board members during the drafting process; however, that input should be provided to the review team early. Input and clarification are vital. Each must be timely; the process cannot be delayed.

The Committee chair(s) will be notified of the Board's action and will proceed with action by the scrivener and Committee reviewer on the timeline set forth above.

### b. On Filing of the Proposed Written Submission

The Board will make the final determination on whether to file a particular brief on behalf of the Association, taking into consideration the recommendation of the Board reviewers. As noted in Item 3(b)(ii), in order to be forwarded to the Board for this action, the proposed written submission must include the recommendation of the Chair(s). In its consideration of the submission, the Board will take that recommendation and the recommendation of the Board reviewers into consideration.

## 3. Drafting of Written Submissions for Filing

### a. Drafting Responsibility

The weight of the writing will be on the scrivener as assisted by the Committee reviewer, with such other Committee input as is warranted and available. It is expected that any brief submitted to the Board reviewers will itself be, at the time submitted to the Board reviewers, of quality appropriate for filing.

### b. Forwarding Requirements for Written Submission

- i. If a draft brief is not processed in accordance with the timelines indicated in Item 1, the proposed brief will not be forwarded to the Board for other action.
- ii. A draft brief must, in order to be forwarded to the Board, include the express approval of one or both of the Committee co-chairs.

### c. Board Reviewers

The Board reviewers will seek to assure that the Board's goals are pursued in the draft brief and may provide light general grammar and text review. In the usual context, the Board will look to the scrivener, Committee reviewer, and such other input from the Committee as occurs to assure that the brief received by the Board reviewers is, when first received, of quality appropriate for filing.

#### 4. Exceptional Circumstances

This process is intended to apply to all instances where the Board receives a recommendation to file in a particular dispute. In the usual case, there will be no exceptions. In the event the Committee chair(s) envision exceptional circumstances (for example, and without limitation, an expedited briefing schedule which cannot, with due diligence, be avoided), the Executive Director will be advised immediately. In such a question of extraordinary instance, the Executive Director will raise the matter to, depending on availability and/or recusal, the President, the President-Elect, or the Vice-President.