C. **Amicus Curiae Briefs Procedure**

The Standing Committee on Amicus Curiae Briefs is charged with reviewing all applications for amicus briefs proposed to be filed in the name of the Association, with determining whether proposed briefs meet Association standards and with making recommendations to the Board of Governors on whether a proposed brief should be approved for filing. Support for the Standing Committee has been assigned to the General Counsel’s Office, which should be consulted as soon as a section or committee begins to consider whether to request that an amicus brief be filed. Information on drafting an Association amicus brief may be found in the memorandum, “ABA Policies and Procedures for Filing ABA Amicus Curiae Briefs” (“ABA Amicus Briefs Memo”), which is located on the Standing Committee’s website at [www.americanbar.org/groups/committees/amicus.html](http://www.americanbar.org/groups/committees/amicus.html), together with the application form, contact information for the General Counsel’s Office and links to previously filed Association amicus briefs.

Section 25.2 of the Bylaws provides that if representation of the Association involves filing a brief, the brief must be reviewed by the Board of Governors or its designee, and authorized by the Board before it is filed. If the Board cannot act in time, the Executive Committee of the Board may review and authorize the brief. (For convenience, references to the Board, below, include the Executive Committee, where the Board cannot act in time). In February, 1997, the Board approved guidelines for the filing of briefs and in July, 2000, August, 2003, and August 2009, approved certain procedural changes, as follows:

1. **The Standing Committee and Its Functions**
   The Standing Committee is composed of seven members, each of whom must have significant advocacy experience before the United States Supreme Court; many have served as clerks for Justices of the Supreme Court. The Association President appoints each Standing Committee member for a three year term and, from among those members, appoints the chair for a one year term.

   Under authority delegated by the Board of Governors, the Standing Committee performs two important functions:
   a. The Standing Committee reviews applications for amicus briefs and provides its recommendation to the Board on whether an application should be accepted. The Board considers, but is not bound by, the Standing Committee’s recommendation; and
   b. The Standing Committee reviews the proposed brief, may request modifications, and determines whether the brief (with the Standing Committee’s modifications) meets Association standards. Before a brief may be considered by the Board, the Standing Committee must certify to the Association President that the brief (a) constitutes a significant contribution to the Court’s consideration of the legal issues, (b) is a fair representation of Association policy, and (c) is of high professional quality.

2. **Filing an Association Amicus Curiae Brief**
   The filing of an amicus brief in the name of the Association must be authorized by the Board of Governors. The Board will only consider authorizing a proposed brief if it is submitted by Association entities authorized to make recommendations to the House of Delegates or by other organizations represented in the House, and if the Association President has received the Standing Committee’s certification, as discussed in Section 1, above.

   The brief will be filed only in the name of the Association and not in the name of an Association entity. The Association President appears as counsel of record at the Association headquarters address. The names of the lawyers who wrote the brief are customarily added, but without their firm affiliation or local addresses.
Coordination of the review and filing process has been assigned to the Association's General Counsel’s Office. Notice requirements and submission of the application and proposed brief to the Board of Governors are the responsibility of the Policy Administration Office.

Because Association amicus briefs are public communications to the courts, the press, the public and the Association’s members, every effort should be made to ensure that there is sufficient time for thorough consideration of an application and the proposed brief by the Board of Governors, the Standing Committee and Association entities that have an interest in the issues presented. Accordingly, as soon as an entity begins to consider a request that an amicus brief be filed in a matter, the General Counsel’s Office should be contacted.

3. Appropriate Cases

It is the policy of the Association to file amicus briefs sparingly and only when the position asserted is: (a) consistent with previously adopted Association policy; or (b) a matter of compelling public interest that the Board of Governors then adopts as Association policy; or (c) of special significance to lawyers or the legal profession. Association briefs do not address party arguments or factual issues; rather, a brief will be approved for filing only where Association expertise, developed from the unique or distinct perspective of the legal profession, provides a significant contribution to a court’s consideration of the legal issues involved.

Briefs will be authorized only at the appellate level and generally only in the highest court in which the issue is likely to be finally determined. Most briefs authorized in recent years have been filed in the United States Supreme Court. Special consideration is given to authorizing Association amicus briefs in other courts that often are the courts of last resort, such as state supreme courts and the Court of Appeals for the Federal Circuit in patent matters. Consideration also will be given to authorizing a written statement of intervention in the Court of Justice of the European Communities and in other international courts. Although Association amicus briefs are usually filed after a court has agreed to hear the case on the merits, filing at the petition for certiorari or other appellate stage will be considered if the Association's position would likely assist the court in determining whether the case warrants appellate review. The filing of a brief at this stage, however, does not mean that the Association is committed to filing at the merits stage.

The Association will only file an amicus brief if the position asserted has been adopted as Association policy. If the brief supports a position that has not previously been adopted as Association policy, and if there is not enough time before the filing date to submit a Report and Recommendation to the House of Delegates, the position may be considered for adoption as Association policy by the Board of Governors. The proponent of the proposed brief bears the burden of persuading the Board of the urgency and importance of adopting the asserted position as Association policy.

Briefs must comply with the relevant court's rules for amicus briefs, including any page limitations. The Association strives to file the most concise brief possible under the circumstances. An Association brief should begin with a statement that explains the Association’s interest in the case and the expertise that the Association brings to the issues that others do not.

4. Submission of an Application and Preparation of a Proposed Amicus Brief

The application form to be used when requesting that the Association file an amicus brief is available on the Standing Committee’s website at www.americanbar.org/groups/committees/amicus.html. Submission by e-mail with attachments is preferred. The completed application, with all requested attachments, should be sent to the Standing Committee by e-mail at the e-mail address listed on the Standing Committee’s website. If expedited consideration is necessary, this must be noted in the cover e-mail.
The Standing Committee forwards a copy of the application to the Executive Committee, providing notice that the application has been received. The Standing Committee then reviews that application and forwards its recommendation to the Executive Committee as to whether the application should be accepted. The Association Secretary, assisted by the Policy Administration Office, distributes the application to the Board of Governors and all Association entities that may have an interest in whether an amicus brief should be filed.

If the application is accepted, the Standing Committee works with the drafters in preparing the proposed brief. Once the Standing Committee has determined that the proposed brief (a) constitutes a significant contribution to the Court’s consideration of the legal issues, (b) is a fair representation of Association policy, and (c) is of high professional quality, the Standing Committee presents the proposed brief to the Board of Governors with its recommendation that the proposed brief be approved for filing in the name of the Association.

However, neither the application nor the proposed brief shall be sent to any of the constituent groups of the Judicial Division.

5. Contents of Application

The application form is available on the Standing Committee’s website, at www.americanbar.org/groups/committees/amicus.html. Submission by e-mail with attachments is preferred. The application must contain the following:

a. Submitting Entity. List the Association entity(ies) submitting the application, with the name, telephone number and e-mail address of at least one contact person for each entity.

b. Current Caption of Case. Give the complete caption of the case and attach copies or links to any briefs that have been filed, including where applicable, the petition for writ of certiorari and the response.

c. Caption in the Court Below. Give the complete caption of the case from which the appeal is taken, and attach a copy of the opinion or order.

d. Related Cases. List, by complete captions, any known related cases that are also pending before the court.

e. Amicus Due Date. State the date by which the proposed ABA amicus brief must be filed.

f. Question(s) Presented. State the full question(s) presented.

g. Position to be Asserted. Briefly state the position to be asserted in the proposed brief.

h. Summary of Facts. Briefly state the facts of the case that are relevant to the position to be asserted.

i. ABA Policy. An ABA amicus brief may be filed only if the position to be asserted has been adopted as ABA policy. If the ABA has existing policy supporting the position, attach a copy of the policy or state it in full. If the position has not been adopted, please briefly state the policy proposed for adoption and why it is important to the ABA that adoption not be delayed until the House of Delegates meets. (See ABA Amicus Curiae Briefs Memo, at Section 3, for information that should be included in this response).

j. Why ABA Should Participate. Briefly state why ABA participation as an amicus is important and how its participation would assist the court in reaching its decision.

k. Consideration by Submitting Entity. State when and how the applying entity(ies) decided to file the application, and include a summary of any dissenting views.

l. Disclosure of Personal/Professional Interest in Case. List each individual or organization participating in the decision to submit the application who has or
had any personal or professional interest in the case, and the bases for that interest.

Drafters. Give the names, firm connections and contact information of those who have agreed to draft the proposed brief. (Please note: the ABA does not pay legal fees for preparation or review of an ABA amicus brief).

Other ABA Entities Potentially Interested in Position to be Asserted. List any other sections, divisions, or committees that may have an interest in the position to be asserted, state whether they have been given a copy of this application and give a brief summary of their responses. (Please note: neither the application nor the proposed brief shall be sent to any of the constituent groups of the Judicial Division).

Outline of Brief. Give a detailed outline of the proposed brief. (Please note that an ABA amicus brief is very specialized: (1) it is not an advocate’s or merits brief; (2) it must be focused on ABA expertise; and (3) it must remain within the “four corners” of ABA policy. (See ABA Amicus Curiae Briefs Memo, at Section 9). It is therefore recommended that an outline, and not a draft of the proposed brief, be submitted).

6. Disclaimer
Each Association amicus brief must contain the following disclaimer:

Neither this brief nor the decision to file it should be interpreted to reflect the views of any judicial member of the American Bar Association. No inference should be drawn that any member of the Judicial Division Council has participated in the adoption of or endorsement of the positions in this brief. This brief was not circulated to any member of the Judicial Division Council prior to filing.

7. Joint Briefs
Generally, the Association will not join in amicus briefs filed by other organizations.

8. Costs and Copies
The Association will pay no legal fees for the preparation or review of an amicus brief but will reimburse the drafters for the necessary costs of printing and filing the brief. While the General Counsel’s Office maintains a small budget for reimbursement, payment by the drafters is appreciated, as it assists the Association in its ability to file additional briefs.

After the brief is printed, the drafters must send a scanned version to the General Counsel’s Office, so that the brief can be posted on the Standing Committee’s web site. In addition, the drafters must send five copies of the printed brief to the General Counsel’s Office for the Standing Committee’s files.

9. Contact Information
Contact information can be found on the Standing Committee’s website, at www.americanbar.org/groups/committees/amicus.html, or by calling the General Counsel’s Office at 312-988-5214.

D. Conflict Of Interest Policy
The Board of Governors approved the following conflict of interest policy, stating that in discharging its public responsibility, the American Bar Association must provide an opportunity for the expression of as many diverse views as possible. In professional undertakings and no less in bar association work, lawyers must avoid the appearance as well as the fact of conflict of interest:
Therefore, Be It Resolved, That every member who has the responsibility of making appointments to any committee of the Association or any of its constituent parts shall make an affirmative effort to appoint persons who will represent as many points of view as are relevant considering the assignment of the committee; and

Be It Further Resolved, That in the report accompanying any recommendation to the Board of Governors or House of Delegates, there shall be disclosed any material interest in the subject matter of the recommendation on the part of any member of any group within the Association which has approved of the recommendation and report prior to its submission to the Board or House by reason of specific employment or representation of clients; and

Be It Further Resolved, that the Secretary of the Association shall have the responsibility of reporting to the House of Delegates from time to time on the implementation of this resolution and shall report to the Board of Governors specific instances in which the provisions of this resolution have not been observed as soon as he or she shall discover them. (BOG 10/73)

The Board subsequently interpreted this policy concerning conflict of interest as precluding an Association member from receiving a fee from a client for services rendered as a member of the Association or any of its constituent entities. (BOG 6/80) (See also Guidelines for ABA Spokespersons before Governmental Entities, at the beginning of this Chapter.)

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