

CONTENTS

Foreword	ix
About the Authors	xi
Amicus Briefs: Answering the Ten Most Important Questions About Amicus Practice 1	
WHAT IS AN AMICUS BRIEF?.....	1
The Original Amicus Curiae	1
The Modern Friend	3
The Prevalence of Amicus Filings.....	8
The Influence of Amicus Briefs.....	14
WHAT ARE THE FUNCTIONS OF AMICUS BRIEFS?.....	24
Examining Policy Issues.....	25
Providing a More Attractive Advocate	26
Supporting a Grant of Discretionary Review.....	26
Supplementing a Party’s Brief	28
Providing a Historical Perspective	29
Providing Technical Expertise	29
Endorsing a Party.....	29
Seeking to Correct, Limit, Publish, or “De-Publish” an Opinion	30
Other Purposes	31
WHO FILES AN AMICUS BRIEF AND WHY?.....	31
WHEN AND HOW DO YOU SEEK AMICUS SUPPORT?.....	39
HOW DO YOU WRITE AN EFFECTIVE AMICUS BRIEF?.....	41
General Contents	42
The Statement of Interest.....	45
Issues on Appeal	46
Focus on the Function of the Brief.....	48

Don't Forget the Case Before the Court	49
Keep the Amicus Brief Short.....	49
Use Persuasive Case Law Support	51
Address Judicial Concerns	51
DO YOU NEED PERMISSION TO FILE AN AMICUS BRIEF?	51
WHEN DO YOU FILE AN AMICUS BRIEF?.....	61
HOW DO YOU RESPOND TO AN AMICUS BRIEF?	64
CAN AN AMICUS CURIAE PARTICIPATE IN ORAL ARGUMENT?	66
ARE THERE ANY ETHICAL CONSIDERATIONS IN AMICUS PRACTICE?	67
Facts Outside the Record	68
Participation by Others in the Amicus Brief	72
Conflicts of Interest	75
CONCLUSION	75
INDEX TO APPENDIX	77
NOTES ON THE EXAMPLES IN THE APPENDIX.....	81
APPENDIX: EXCERPTS FROM EXAMPLES OF AMICUS BRIEFS	85
EXAMPLE 1	85
Authors Robert E. Rains and Nancy G. Shor	
Case <i>Sullivan v. Zebley</i> , 493 U.S. 521 (1990)	
EXAMPLE 2	103
Author Chesley N. Blevins, Jackson Walker L.L.P.	
Case <i>Boerjan v. Rodriguez</i> , 436 S.W.3d 307 (Tex. 2014)	
EXAMPLE 3	106
Author James F. Buchanan, Welder Leshin LLP	
Case <i>Boerjan v. Rodriguez</i> , 436 S.W.3d 307 (Tex. 2014)	
EXAMPLE 4	110
Authors Andrew L. Frey, Kenneth S. Geller, Lauren R. Goldman, Michael S. Rayfield, Mayer Brown LLP; Miguel A. Estrada, Amir C. Tayrani, Robert E. Johnson, Gibson, Dunn & Crutcher LLP	

Case	<i>R.J. Reynolds Tobacco Co. v. Brown</i> , 134 S. Ct. 2726 (2014) (cert. denied)	
EXAMPLE 5		124
Authors	Walter Dellinger, Irving L. Gornstein, Jonathan D. Hacker, Anton Metlitsky, O’Melveny & Myers LLP	
Case	<i>Hollingsworth v. Perry</i> , 134 S. Ct. 2175 (2014)	
EXAMPLE 6		135
Authors	Patrick Morrisey, Attorney General; Elbert Lin, Solicitor General; Jennifer S. Greenlie and J. Zak Ritchie, Assistant Attorneys General; Office of the Attorney General of West Virginia	
Case	<i>Christie v. NCAA</i> , 134 S. Ct. 2866 (2014) (cert. denied)	
EXAMPLE 7		150
Authors	Burton Craige and Narendra K. Ghosh, Patterson Harkavy LLP; J. Edward Bell III, Bell Legal Group	
Case	<i>CTS Corp. v. Waldburger</i> , 134 S. Ct. 2175 (2014)	
EXAMPLE 8		168
Authors	Andre M. Mura, Center for Constitutional Litigation, P.C.; Mary Alice McLarty, American Association for Justice	
Case	<i>Mutual Pharmaceutical Co. v. Bartlett</i> , 133 S. Ct. 2466 (2013)	
EXAMPLE 9		182
Authors	J. Michael Weston, Lederer Weston Craig, PLC; Mary Massaron Ross and Hilary A. Ballentine, Plunkett Cooney	
Case	No. 13-1339, <i>Spokeo, Inc. v. Robins</i> , in the Supreme Court of the United States	
EXAMPLE 10		196
Authors	Mark A. Behrens, Shook, Hardy & Bacon L.L.P.; Kate Comerford Todd and Sheldon B. Gilbert, National Chamber Litigation Center	
Case	No. 13-31048, <i>Dupre v. CBS Corp.</i> , in the United States Court of Appeals for the Fifth Circuit	

EXAMPLE 11	211
Authors	U.S. Solicitor General Paul D. Clement, Counsel of Record; Peter D. Keisler, Assistant Attorney General; Gregory G. Garre, Deputy Solicitor General; Daryl Joseffer, Assistant to Solicitor General; Douglas N. Letter, August E. Flintje, Attorneys, Department of Justice; Lawrence H. Norton, General Counsel, Richard B. Bader, Associate General Counsel. David Kolker, Assistant General Counsel', Steve N. Hajjar, Attorney, Federal Election Commission; Howard M. Radzely, Solicitor, Katherine E. Bissell, Associate Solicitor, Nora Carroll, Senior Attorney, Department of Labor
Case	<i>Davenport v. Washington Education Association</i> , 551 U.S. 177 (2007)
EXAMPLE 12	223
Authors	Charles F. Preuss and Alan J. Lazarus, Drinker Biddle & Reath, LLP
Case	<i>Aguilar v. ExxonMobil Corp.</i> , in the <i>Lockheed Litig. Cases</i> , 192 P.2d 403 (2007) (review dismissed)
EXAMPLE 13	245
Authors	Debra P. Fourlas and Barbara A. Darkes, McNees Wallace & Nurick LLC
Case	<i>Lake Adventure Community Association v. Dingman Township Zoning Hearing Board</i> , 79 A.3d 708 (Pa. Commw. Ct. 2013)
EXAMPLE 14	259
Authors	William Pentelovitch and Emma G. Greenman, Maslon Edelman Borman & Brand, LLP
Case	No. 62-CV-12-7718, <i>Minnesota Voters Alliance v. State of Minnesota</i> , in the Second Judicial District Court, Ramsey County, Minnesota

EXAMPLE 15	270
Authors	Paul D. Clement, Jeffrey M. Harris, Bancroft PLLC; John B. Bellinger III, Lisa S. Blatt, Ramon P. Marks, R. Reeves Anderson, Arnold & Porter LLP
Case	<i>Kiobel v. Royal Dutch Petroleum</i> Co., 133 S. Ct. 1659 (2013)
EXAMPLE 16	286
Authors	Laurence H. Tribe and Jonathan Massey
Case	<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003).
EXCERPTS FROM FEDERAL AND STATE COURT APPELLATE RULES PERTAINING TO AMICUS BRIEFS.....	309