
The United States Law Week

Supreme Court Formalizes Guidance for Its 'Friends'

By Kimberly Strawbridge Robinson

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- Court issues guidance for filing amicus, or friend-of-the-court briefs
 - Guidance is attempt to formalize longstanding practices in the clerk's office
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The Supreme Court Oct. 17 issued guidance for filers of friend-of-the-court briefs that "clears up a number of contested issues previously resolved through word-of-mouth lore among practitioners," one of them said.

The guidelines on amicus briefs reflect a "collection of information that the clerk's office would tell you if you asked," but which was previously unavailable in written form, said Hogan Lovells's Sean Marotta.

Whenever the clerk's office would try to enforce these informal rules, it could cause confusion, Marotta said.

New information includes rules regarding "blanket-consent" letters, the listing of numerous amici, and explicit permission for an attorney to file more than one amicus brief in a given case.

It's the second round of guidance issued by the court in recent weeks. Just before the start of the new term, it issued protocols noting that the justices must give advocates two minutes to get their arguments going before they can interrupt with comments or questions.

Gaming the System?

Most every case the Supreme Court hears includes at least one amicus brief, and some have dozens. They are often used to add information that might not be presented by the parties.

In the new information, the requirement on filing more than one amicus brief in a given case seems like it can be gamed by lawyers to get around severe word limits for amici, frequent amicus filer Josh Blackman said.

Instead of being limited to 6,000 words, an attorney might be able to file an amicus brief on behalf of different groups and get 12,000, 18,000, or even more words on the subject, he said.

One particularly helpful provision Blackman noted is guidance on how to file an amicus brief in two separate cases involving the same issue.

Previously it was unclear how to do this. But the guidance makes clear you can file just one brief so long as you put certain information on the cover, Blackman said.

That's going to cut back on a lot of printing costs, he said.

Wasted Resources

Another notable update involves amicus briefs in emergency applications, Marotta said.

These often occur in death penalty cases, asking the Supreme Court to halt an impending execution.

The new guidance said amicus briefs in these cases are "strongly discouraged."

The court seems to be trying to get the point across that, given the pace of these cases, filing an amicus brief might not be the best use of resources, Marotta said.

But, he said he's not sure the new guidance is going to actually stop anyone who wants to be heard in the matters.

Other guidance includes:

- What does, and doesn't, need to be in the amicus brief—namely, you don't need restate the question presented;
- How to list particularly long captions that won't fit on the front page; and
- An explicit prohibition on listing law students or interns on briefs.

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